

# **WAUKESHA COUNTY SHORELAND, FLOODLAND PROTECTION ORDINANCE**

## **SECTION 1. AUTHORITY, INTERPRETATION AND PURPOSES**

### **1.01. Authority.**

This ordinance is adopted under authority granted by sections 59.97, 59.971, 59.99, 87.30 and 144.26 of the Wisconsin Statutes and amendments thereto. The County Board of Supervisors of Waukesha County does ordain the following (Ord. No. 141-44. § I, 7-22-86):

### **Sec. 1.02. Purpose and intent.**

For the purpose of promoting the public health, safety, convenience and welfare, this ordinance has been established to:

- (A) Further the maintenance of safe and healthful conditions and prevent and control water pollution through:
  - (1) Limiting structures to those areas where soil and geological conditions will provide a safe foundation.
  - (2) Establishing minimum lot sizes to provide control density and suitable area for private sewage disposal facilities.
  - (3) The control of filling and grading to prevent serious soil erosion.
- (B) Protect spawning grounds, fish and aquatic life through:
  - (1) Preserving wetlands and other fish and aquatic habitat.
  - (2) Regulating pollution sources.
  - (3) Controlling shoreline alterations such as dredging, lagooning and the construction of seawalls.
- (C) Control building sites, placement of structures and land uses through:
  - (1) Reduction and elimination of conflicting land uses.
  - (2) Prohibiting uses detrimental to the shoreland area.
  - (3) Setting minimum lot sizes and widths.
  - (4) Regulating building and structural placement.
  - (5) Regulating land and water uses so as to assure a more compatible relationship to the carrying capacity of the land and water.
- (D) Preserve shore cover and natural beauty through:
  - (1) Restricting the removal of natural shoreland cover.
  - (2) Preventing shoreline encroachment by structures.
  - (3) Controlling shoreland excavation and other earth moving activities.

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- (4) Regulating the use and placement of boathouses and other structures.
- (E) Provide for adequate light, air, sanitation, drainage, convenience of access, safety from fire, flood hazard and other dangers, promote the safety and efficiency of the public streets and highways, conserving and stabilizing the economic value of the community, preserve and promote the general attractiveness and character of the community environment and guide the proper distribution and location of population and the various land uses. (Ord. No. 141-44, § II, 7-22-86)

## **1.03. General interpretation.**

It is not intended by this ordinance to repeal, abrogate, annul, impair or interfere with any existing easements, covenants or agreements between parties or with any rules, regulations, or permits previously adopted or issued pursuant to laws; provided, however, that where this ordinance imposes a greater restriction upon the use of building or premises, or upon the height of a building or requires larger open spaces that are required by other rules, regulations or permits or by easements, covenants or agreements, the provisions of this ordinance shall govern.

## **SECTION 2. DEFINITIONS.**

### **2.01. General interpretation.**

For the purpose of this Ordinance, and when not inconsistent with the context, words used herein in the present tense include the future, words in the singular number include the plural, and words in the plural number include the singular; the word "structure" includes buildings; the word "occupied" includes designed or intended to be occupied; the word "used" includes designed or intended to be used; the word "inhabit" includes intended to be inhabited; the word "shall" is always mandatory and not merely permissive; "county" refers to the County of Waukesha, Wisconsin; "town board" refers to the town board of supervisors of any town under the jurisdiction of this Ordinance; "plan commission" refers to local Town Plan Commission established under village powers pursuant to Section 62.23 Wisconsin Statutes, the Town Park Commission established pursuant to Section 60.181 Wisconsin Statutes, or any other agency created by the Town Board and authorized by statute to plan land use; and reference to any officer such as "clerk", "building inspector", "engineer", "attorney", means that officer appointed or otherwise officially designated by the Town or County in such capacity, unless otherwise specifically designated; the words "code" and "ordinance" are to be used interchangeably; the word "person" may be taken for persons, associations, co-partnership or corporations; "County Zoning Agency" refers to the Waukesha County Park and Planning Commission or the Land Use, Parks and Environment standing committee as may be designated by the County Board as its agency in regard to zoning; "Zoning Administrator" refers to the County Zoning Administrator as designated by the "County Zoning Agency".

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## 2.02. Specific words and phrases.

For the purposes of this ordinance certain words and phrases shall be defined as follows:

- (1) **Administrative Officer:** Any officer such as a Clerk, Building Inspector, Engineer, Attorney, or Zoning Administrator, or his agent, who is appointed, elected or is otherwise officially designated by the Town, and/or County and does not include any Committee, Commission, or Board or its individual members.
- (1a) **Apartment:** A suite of rooms or a room in a multiple dwelling which suite or room is arranged, intended, or designed to be occupied as a residence of single family, individual or group of individuals.
- (1b) **Arcade:** Any premises containing three (3) or more amusement devices or games usually of an electronic nature, for the primary use of entertainment of the public or the patrons of the establishment.
- (2) **Base setback line:** The ultimate street line as established by section 3.08 and from which all required setbacks shall be computed.
- (3) **Basement:** A story partly below ground level which, if occupied for living purposes, shall be counted as a story for purposes of height measurement and must be at least one (1) foot above average seasonal ground water
- (4) **Boathouse:** An accessory structure located close to the ordinary high water mark and designed and used principally for the storage of boats and accessory marine equipment normally used in the daily activities of lakefront property and which has a large garage type door for primary access on the side of the building facing the water.
- (4a) **Bed and Breakfast Facility:** An owner occupied residence often in a building with landmark or historically significant qualities where lodging for paying guests is offered and which offers breakfast to these guests as its only meal.
- (5) **Boat-livery:** See "marina"
- (6) **Building:** Any structure used, designed or intended for the protection, shelter or enclosure of persons, animals or property.
- (7) **Building, principal:** The main building on a lot, intended for primary use as permitted by the regulations of the district in which it is located. Any building intended to be used for human habitation shall constitute the principal buildings, except as in section 3.18.
- (8) **Building, accessory:** A building or portion of a building subordinate to and detached from the principal building and used for a purpose customarily incident to

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the permitted use of the principal building.

- (9) **Building, height of:** The vertical distance from the average established street grade in front of the lot or the finished grade at the building line, whichever is higher, to the highest point of the coping of a flat roof, to the deck line of a mansard roof, or to the average height of the highest gable of a gambrel, hip or pitch roof.
- (10) **Bulkhead line:** A boundary line established along any section of the shore of any navigable waters by a municipal ordinance approved by the department of natural resources pursuant to section 30.11 of the Wisconsin Statutes.
- (11) **Channel:** Those floodlands normally occupied by a stream of water under average annual high-water conditions while confined within generally well established banks.
- (11a) **Conditional use:** A use which may not conform with permitted uses of a category but which may be permitted by the terms of this ordinance provided that certain conditions specified herein or as may be determined to be necessary by the county and town are required as part of the permit issued by the county zoning agency pursuant to this ordinance.
- (12) **Clean fill disposal site:** A tract of land operated by a public or private agent as a conditional use under section 3.07 of this ordinance which involves only materials such as sand, dirt, gravel, concrete or other forms of clean fill material.
- (12a) **Dance Hall:** A facility including any room, place or space in which a public dance, public ball with live or amplified music (not including juke box) and live entertainment including shows, disc jockeys, comedy or dramatic acts, is conducted excluding any public or parochial school or church hall when used for public dances sponsored by the school or church authority or of a parent teachers association.
- (12b) **Deck:** A structure characterized by a flat open horizontal surface or platform suspended above the grade of the land it covers and which may be supported by posts, beams, cantilever and/or by other methods.
- (13a) **Dryland Access:** A vehicle access route (road or drive) whose surface is not more than one (1) foot below the 100 Year Floodplain, as defined herein, and which is or is intended to connect lands which are outside the floodplain.
- (13) **District:** An area of land of the County of Waukesha for which the zoning regulations are the same.
- (14) **Dwelling, single:** A building designed for and occupied exclusively by one (1) family.
- (15) **Dwelling, multiple:** A building or portion thereof designed for and occupied by

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more than one (1) family, including row houses, duplex houses, town houses and apartment houses.

- (15a) **Environmental Corridors:** Environmental corridors (primary and secondary) are the composite of the best individual elements of the natural resource base including surface water, streams, and rivers and their associated floodlands and shorelands; woodlands, wetlands and wildlife habitat; areas of ground water discharge and recharge; organic soils, rugged terrain and high relief topography; and significant geological formations and physiographic features. A description of the process the defining and delineation of Environmental Corridors is set forth in the Southeastern Wisconsin Regional Planning Commission's Technical Record, Volume 4, No. 2 and is incorporated herein by reference.
- (16) **Family:** The body of persons related by blood, marriage or adoption or four (4) unrelated persons who live together in one (1) dwelling unit as a single housekeeping entity.
- (16a) **Farm, fur:** A tract of land devoted in whole or in part to the raising of fur bearing animals for commercial purposes.
- (16b) **Farm, pig:** A tract of land devoted principally to the raising and feeding of pigs and hogs.
- (16c) **Farm, poultry and/or egg production:** A tract of land, which may or may not be a part of a larger farm operation, devoted principally to the raising of poultry and/or egg production.
- (17) **Flood:** A temporary rise in the streamflow or change in lake level that results in water overtopping the boundaries of its channel and inundating areas adjacent to the stream channel or lake bed.
- (18) **Flood profile:** A graph showing the relationship of the floodwater surface elevation for a flood event of a specified recurrence interval to the stream bed and other significant natural and man-made features along a stream.
- (19) **Flood stage:** The elevation of the floodwater surface above an officially established datum plane. In Waukesha County, the datum plane used shall be mean sea level, 1929 adjustment.
- (20) **Floodlands:** Those lands including the floodplains, floodways and channels subject to inundation by the one hundred-year recurrence interval flood or, where such data is not available, the maximum flood of record.
- (21) **Floodplain:** Those floodlands, including the floodway, subject to inundation by the one hundred-year recurrence interval flood or, where such data is not available, the

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maximum flood of record.

- (21a) **Flood protection elevation:** The elevation corresponding to two (2) feet of freeboard above the floodplain as defined herein.
- (22) **Floodproofing:** Floodproofing involves any combination of structural provisions, change or adjustments to properties and structures subject to flooding, primarily for the purpose of reducing or eliminating flood damage to properties, water and sanitary facilities, structures and contents of buildings in flood hazard areas. Such facilities shall be designed to withstand the flood velocities, forces and other factors associated with the one hundred-year recurrence interval flood, and which will assure protection of the property to the flood protection elevation. Such measures include, with limitation because of enumeration, the following:
- (A) Installation of watertight doors, bulkheads and shutters.
  - (B) Reinforcement of walls and floors to resist pressures.
  - (C) Use of paints, membranes or mortars to reduce seepage of water through walls.
  - (D) Addition of mass or weight to structures to prevent flotation.
  - (E) Placement of essential utilities above the flood protection elevation.
  - (F) Pumping facilities and/or subsurface drainage systems for buildings to relieve external foundation wall and basement floor pressures and to lower water levels in structures.
  - (G) Construction of water supply and waste treatment systems to prevent the entrance of flood waters.
  - (H) Construction to resist rupture or collapse caused by water pressure or floating debris.
  - (I) Cutoff valves or sewer lines or the elimination of gravity flow basement drains.
- (23) **Floodway:** Those floodlands including the channel required to carry and discharge the one hundred-year recurrence interval flood.
- (24) **Floor area ratio:** The term "floor area ratio" or F.A.R. shall be used to indicate the total floor area of buildings allowed on a given lot, expressed as a percentage ratio to the total area of the lot; i.e., an F.A.R. of one hundred (100) percent allows a floor area equal to the total area of the lot, an F.A.R. of fifty (50) percent allows a floor

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area of one-half the total area of the lot, etc. A floor area ratio of twenty-five (25) percent of the lot.

- (25) **Frontage:** The smallest dimension of a lot abutting a public street measured along the street line.
- (25a) **Freeboard:** A factor of safety expressed in terms of a certain amount of feet above a calculated flood level. Freeboard compensates for the many unknown factors that contribute to flood heights greater than the height calculated, and include, but not limited to, ice jams, debris accumulation, wave action, obstructed bridge openings, and the effects of urbanization on the hydrology of the watershed.
- (26) **Garage:** Any structure where private vehicles are kept for storage purposes only and wherein such use is accessory to the residential use of the property on which it is stored.
- (27) **Garage, storage:** Any building or premises used for the storage only of motor driven vehicles, pursuant to previous arrangements and not to transients, and where no equipment, parts, fuel, grease or oil is sold and vehicles are not equipped, serviced, repaired, hired or sold for monetary gain as a business.
- (28) **Grade, established:** The elevation of the finished street at the centerline or curb as fixed by the engineer or by such authority as shall be designated by law to determine such an elevation.
- (28a) **Minor grading, filling and land altering activities:** Those land altering activities or projects that do not exceed land disturbance greater than three thousand (3,000) square feet in area and/or fifteen (15) cubic yards in aggregate.
- (29) **Guesthouse:** A structure used principally for the occasional occupancy of guests of the owners, and shall not be leased or rented for human occupancy.
- (30) **High water elevation (ordinary high water mark):** The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation or other easily recognized characteristics.
- (31) **Highway:** A right-of-way, designated on the "Established Street and Highway Width Ordinance" of Waukesha County or other comprehensive system, for the principal purpose of providing vehicular thoroughfare and not necessarily affording direct access to abutting property. (**Cross reference**-Highway widths, § 24-26 et seq.)
- (32) **Home occupation:** A gainful occupation conducted by members of the family

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within its place of residence, where the space used is incidental to residential use and no article is sold or offered for sale except such as is produced by such occupation.

- (33) **Horticulture:** The culture of growing and cultivating fruits, flowers and related plant material.
- (34) **Housekeeping Entity:** A housing or lodging unit where all of the amenities of bathing and sanitary facilities, eating, cooking, living, sleeping and storage are provided the person or body of persons occupying and living together as a single entity within the unit. A single family residence or a dwelling unit in a multiple family structure are deemed to be a single housekeeping entity.
- (34a) **Human Habitation:** The use of a building or structure for overnight living or longer periods of time, and including the aggregate of normal occupancy activities such as lounging, cooking, eating, sleeping, bathing, sanitation, etc.
- (34b) **Increase in Regional Flood Height:** Means a calculated upward rise in the regional flood elevation, equal to or greater than 0.01 foot, resulting from a comparison of existing conditions and proposed conditions which is directly attributable to development in the floodplain but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction, coefficients and discharge.
- (34c) **In-Law Unit:** A room or suite of rooms used or occupied as a separate housekeeping entity and located in a single family dwelling occupied by persons related by blood or marriage to the family or persons occupying the single-family dwelling.
- (35) **Kennel, commercial:** An establishment, structure or premises where dogs are raised and sold, bred, boarded, trained or groomed for commercial purposes. The raising and selling of three (3) or more litters of dogs from any number of adult dogs per year shall constitute a commercial kennel.
- (35a) **Kennel, hobby:** A non-commercial establishment, structure, premises or pursuit accessory to the principal use of the property where three (3) or more dogs of six (6) or more months of age are kept for such private purposes as pets, field trials, shows or hobby. The occasional raising of not more than two (2) litters of dogs per year on a premises and the sale or disposal of said dogs within six (6) months of their birth shall also be considered a hobby kennel.
- (36) **Lake, navigable:** Under Wisconsin law includes all natural inland bodies of water of any size which are capable of floating any boat, skiff or canoe of the shallowest draft used for recreational purposes. (See cases cited below [section] 2.02(48) of this ordinance.)



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- (37) **Lot:** A parcel of contiguous land with described boundaries and abutting or having access via an approved easement to a public street or other approved way, and exclusive of any land lying in public rights -of-way, mil tax roads, public streams or other public water body. Where such streams or public rights-of-way divide a single described parcel into two (2) or more parts, such severed portions shall be considered separate individual lots if such separate parcels individually meet the use regulations, building location and area regulations of the zoning district in which they are located. Where such separate parcels do not meet those requirements and have been described as a single parcel of record, together such severed portions shall be considered to be a single lot for regulatory purposes under the provisions of this ordinance, and such severed areas shall constitute a single lot for computation of area regulations and other locational provisions of this ordinance.
- (38) **Lot area:** The area of a lot as defined herein bounded by lot lines exclusive of land provided for public rights-of-way, mil tax roads, public streams or other public bodies of water.
- (39) **Lot depth:** The mean horizontal distance measured between the street line and the opposing rear lines of the lot.
- (40) **Lot lines:** The lines bounding a lot as defined herein.
- (41) **Lot line, shore:** The abutting ordinary high water mark of navigable waters.
- (42) **Lot line, side:** A lot line extending from a street line towards the interior of the block and separating adjoining lots.
- (43) **Lot width, minimum average:** The average between the minimum and maximum distance as measured on a lot between the side lot lines, and perpendicular to the centerline of the lot. A lot shall be at least as wide as the specified minimum average width for a distance of at least one-half the length of the lot.
- (44) **Marina:** A tract of land contiguous to a body of water and including any piers, wharves or docks extending into the water and below the ordinary high water mark and/or any structure upon that tract of land where the commercial mooring at docks or buoys (dry or wet), maintenance, repair, refueling or selling of boats and/or accessories for boats take place. For purposes of this ordinance, the word commercial describing marina activities occurring at piers, docks or wharves such as mooring, dockage or repair, is the act of receiving remuneration, either in monetary payments or other services or privileges, and where the use of the property or water is purchased by persons other the riparian owner or not more than the unrelated four (4) persons, defined herein by the word "family," who dwell on the parcel.
- (45) **Minor structures:** Any small, moveable accessory erection or construction such as birdhouses; tool houses; pethouses; play equipment; arbors; and wall and fences

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under four (4) feet in height.

- (46) **Mobile Home:** A structure or vehicle which is used, titled and registered as living quarters, and contains sleeping accommodations, a flush toilet, a tub or shower bath, kitchen facilities, and plumbing and electrical connections for attachment to outside systems; and is designed for transportation after fabrication on streets or highways on wheels and arrives at the site where it is to be occupied complete and ready for occupancy except for minor and incidental unpacking and assembly operations, locations on jacks or other temporary or permanent foundations, connections to utilities, and the like. A mobile home is not considered a recreational vehicle as defined herein.
- (46a) **Modular Home:** A principal structure which is partially pre-assembled at a manufacturing plant and placed together or erected on a lot or parcel as a dwelling unit or units (also called "pre-fabricated" or "pre-cut" homes or "double-wide" units) meeting the requirements of all applicable state and local building codes.
- (47) **Motel (also Hotel):** A building or series of buildings, with or without the availability of meals being served in a restaurant associated with the facility, in which short term lodging (not a housekeeping entity) and normally not exceeding two (2) weeks in duration, is offered for the travelling public for compensation and which may have more than five (5) individual sleeping rooms, or grouping of rooms (or a suite) or units and toilet and bathing facilities for the purpose of overnight sleeping and which is distinguished from a hotel primarily by reason of providing direct independent access to each room and adjoining parking for each room or unit. Such facilities shall provide longer term housing (normally more than two (2) weeks) to persons or groups of persons as a residence as such uses are considered apartments with each unit serving as a single housekeeping entity.
- (48) **Navigable waters:** Those intermittent and perennial rivers, streams, ponds, lakes and flowages shown on the U.S.G.S. Topographic Quadrangle 7.5 minutes series maps of Waukesha County (and as periodically updated) and those stream reaches shown on the large scale topographic mapping control survey project for Waukesha County conducted under section 87.31 Wisconsin Statutes. Any water is considered navigable in fact if it meets the test outlined in case law cited herein. (Wisconsin case law, specifically, Muench vs. Public Service Commission, 261 Wisconsin 492 (1952) and DeGayner and Company Inc. vs. Department of Natural Resources, 70 Wisconsin 2d 936 (1975) held that a stream is navigable in fact if it is capable of floating any boat, skiff or canoe of the shallowest draft used for recreational purposes and that a stream need not be navigable in its normal or natural condition to be navigable in fact. See NR115). Determinations of navigability are ultimately field determinations and map delineations are merely the best representation of navigable conditions as any particular time.
- (49) **Navigational structures:** Those man-made objects constructed adjacent to or within

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floodlands and/or shorelands for the purpose of siding navigation.

- (49a) **Offset:** The horizontal distance measured from the side or rear lot line, not along a street, to any roofed or enclosed portion of a building, and not including roof overhang, as defined herein, of twenty-four (24") inches or less.
- (49b) **Ordinary High Water Mark:** The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic. Where the bank or shore at any particular place is of such character that it is difficult or impossible to ascertain where the point of ordinary high-water mark is, recourse may be had to the opposite bank of a stream or to other places on the shore of a lake or flowage to determine whether a given stage of water is above or below the ordinary high-water mark.
- (49c) **Outdoor/Indoor Recreational Facilities:** Land and structures, along with accessory equipment, designed and utilized for leisure time activities of a predominantly "outdoor or indoor" nature and of having a more specific purpose such as tennis courts, swimming pools, basketball or racquetball courts, ice arenas, etc., other than passive park-like open areas, and further classified as follows:
- Public:** Facilities owned and operated by a governmental agency for limited or general public use.
- Private Commercial:** Facilities owned and operated by an individual, group, or corporation for profit as a business whether or not opened to general public use.
- Private Non-Commercial Group:** Facilities owned and operated by a group for the exclusive use of the members of such group and their guests and not for profit as a business.
- (49d) **Overhang:** That portion of a roof over a structure and designated as an integral part of the structure, which extends from the outer wall of the structure to the eave. Rain gutters are not included or considered part of the overhang.
- (49e) **Patio:** A flat, open, horizontal surface or platform usually constructed of concrete, brick or wood and located on the surface of the ground or at the average grade of the ground surface at the patio site and not extending more than six (6) inches above the grade. It shall not be considered a structure as defined and regulated herein. Where its surface lies more than six (6) inches above the grade or average grade it shall be considered a deck and regulated as a structure.
- (50) **Pierhead line:** A boundary line established along any section of the shore of any

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navigable waters by a municipal ordinance approved by the state department of natural resources, pursuant to section 30.13 of the Wisconsin Statutes. Piers and wharves are only permitted to the landward side of such pierhead lines unless a permit has been obtained pursuant to section 30.12(2) of the Wisconsin Statutes.

- (50a) **Planned Unit Development (PUD):** is a development strategy, process or procedure whereby a relatively large parcel of land is developed for a specific use in such a way as to provide specific benefits to the community as well as the developer and future citizens who will reside with the development, and when the normal application of standards and requirements are waived or made more flexible, and which shall contain substantial amounts of common open space for aesthetic, natural preservation or recreational purposes.
- (51) **Planting screen:** An area landscaped with natural growing plant material sufficiently dense and of adequate height at the time of planting so as to effectively screen off from vision the object it is intended to hide from view.
- (51a) **Porch/stoop:** A functional element of the ingress/egress of a principal structure allowing for easy and convenient passage between the exterior and interior of said structure. For the purposes of regulation in this ordinance a stoop is considered to be twenty (20) square feet or less whereas a porch exceeds twenty (20) square feet in area.
- (52) **Private club:** A building or grounds used for regular or periodic meetings or gatherings of a group of Persons organized for a nonprofit purpose, but not groups organized to render a service customarily carried on as a business.
- (52b) **Practical difficulty:** That circumstance where special conditions affect a particular property and make strict compliance with the dimensional standards of the ordinance regarding area, setbacks, offsets, width, height or floor area ratio unreasonable and prevent a property from being utilized for a permitted purpose in conformance with the use regulations of the zoning district in which the property is located or would render conformity with such restrictions unnecessarily burdensome.
- (53) **Professional office:** The office of a doctor, practitioner, dentist, minister, architect, landscape architect, professional engineer, lawyer, author, musician or other similar recognized profession.
- (54) **Public and semi-public buildings:** Structures principally of an institutional nature and serving a public need such as: hospitals, resthomes, schools, including private academic schools and nursery schools, libraries, museums, post offices, police and fire stations, public and private utilities and other public services; but not including the operation of a public bar, restaurant or recreational facility as a commercial enterprise.

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- (54a) **Pyramiding:** The act of obtaining or providing access to public bodies of water across private lots or lands in a manner which increases the number of families which have access to that water to a degree greater than what would occur with individual riparian owners having individual lots fronting on the water. The effect of pyramiding is to funnel backlot development from offshore lots or residences via a narrow parcel of land to provide access to the water. Publicly owned access points shall not fall within this definition.
- (55) **Quarrying:** The removal of rock, slate, gravel, sand, topsoil, or other natural material from the quarrying site by excavating, stripping, leveling or any other such process.
- (56) **Reach:** A longitudinal segment of a stream generally including those floodlands wherein flood stages are primarily and commonly controlled by the same man-made or natural obstructions to flow.
- (56a) **Recreational Vehicle:** Motorized vehicles that include a cabin for living accommodations and are commonly used for recreational travel and touring. Vehicles included in this category come in several forms: travel trailers, tent trailers and camping trailers, all of which must be towed by another vehicle; and truck campers, motor homes and camper vehicle, all of which have a motor within the body of the vehicle and are self-propelled.
- (57) **Refuse disposal site:** A tract of land operated by a public or private agent, subject to restrictions of use and under supervision and where more than one (1) family may take all types of refuse, including organic and inorganic wastes (but excluding human excreta, sewage, and/or other liquid wastes) for compacting and burial by sanitary land fill methods. Hard or clean fill operations involving materials such as sand, dirt, gravel, concrete or other forms of clean fill material shall not constitute refuse disposal sites for the purposes of this ordinance.
- (58) **Restaurant:** "Restaurant means and includes any building, room or place wherein meals or lunches are prepared, served or sold to transients or the general public, and all places used in connection therewith. Meals or lunches shall not include soft drinks, ice cream, milk, milk drinks, ices and confections. The serving in taverns of free lunches consisting of popcorn, cheese, crackers, pretzels, cold sausage, cured fish or bread and butter shall not constitute such taverns to be restaurants. The term restaurant does not apply to churches, religious, fraternal, youths' or patriotic organizations, service clubs, and civic organizations which occasionally prepare or serve or sell meals or lunches to transients or the general public nor shall it include any private individual selling foods from a movable or temporary stand at public farm sales." [section] 50.50 Wisconsin Statutes.
- (59) **Road:** A public or private right-of-way usually affording primary access to abutting property.

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- (60) **Roadside stand:** A farm building used or intended to be used solely by the owner or tenant of the farm on which such building is located for the sale of farm products raised on said farm.
- (61) **Sand or gravel pits:** See quarrying.
- (62) **Setback:** The horizontal distance between the base setback line and the nearest roofed or enclosed portion of a building excluding the twenty-four (24") inch roof overhang defined herein.
- (63) **Shore setback:** The horizontal distance between the ordinary high water mark of navigable waters and the closest point of a principal or accessory structure as defined herein.
- (64) **Shorelands:** Those lands lying under, abutting and close to navigable water and within the following area: One thousand (1,000) feet from the ordinary high water mark of navigable lakes, ponds or flowages as listed in the Wisconsin Department of Natural Resources publication entitled "Surface Water Resources of Waukesha County" or as indicated as bodies of water on the U.S.G.S seven and one-half-minute quadrangle maps and as specifically noted on the Shoreland and Floodland Protection Zoning Maps of Waukesha County; three hundred (300) feet of the ordinary high water mark of navigable rivers or streams, or to the landward side of the floodplain (as defined herein) whichever is greater. Rivers and streams in Waukesha County shall be presumed to be navigable if they are designated as perennial or intermittent waterways on the seven and one-half-minute series U.S.G.S. quadrangle surveys. Flood hazard boundary maps, flood insurance rate maps, flood boundary-floodway maps, U.S.D.A. County Soil Survey maps, topographic maps and other existing floodplain zoning maps may all be used in assisting the County in a determination of floodland and/or shoreland delineation and said shoreland and floodlands in Waukesha County have also been delineated on aerial maps which are hereinafter referred to and adopted as part of this ordinance.
- (64a) **Shoreland/wetlands:** Those wetland areas that lie within the shoreland and floodland jurisdiction of this ordinance and that have been designated as such on the Final Wisconsin Wetlands Inventory Maps for Waukesha County prepared by the Wisconsin Department of Natural Resources. Wetlands are generally typified by site conditions where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.
- (65) **Shorelines:** The intersection of the land surfaces abutting lakes, ponds, streams, flowages, and wetlands with the average annual high water elevation.
- (66) **Sign:** Any structure or device displaying advertising in the form of lettering, pictures, symbols or other media.

## WAUKESHA COUNTY SHORELAND, FLOODLAND PROTECTION ORDINANCE

- (66a) **Special exception:** A special or unique situation, excluding a change in use or a use prohibited in a zoning district, which may be authorized by the board of adjustment and is specifically set forth in the ordinance as a special exception and which may justify the waiver of the regulations applicable thereto and does not necessarily require the demonstration of an unnecessary hardship or practical difficulty.
- (67) **Stable:** "Stable" shall mean the same as "garage," one (1) draft animal or saddle horse being considered the equivalent of one (1) self-propelled vehicle.
- (68) **Story:** That portion of a building included between the surface of a floor and the surface of the floor next above it; or, if there be no floor above it, then the space between the floor and the ceiling next above it. A basement having one-half or more of its height above grade shall be deemed a story for purposes of height regulation.
- (68a) **Streambank and Shoreline Stabilization Structures (SSSS)** (formerly known as seawalls): Mechanical erosion and sediment control structures or devices which afford protection measures to stream banks and lake shorelines from the adverse effect of wind, waves, and water and which abate the depletion of the soil and land area adjacent to the water (i.e., rock riprap).
- (69) **Street:** Same as "road."
- (70) **Street, frontage:** A street contiguous and parallel to a traffic artery and affording direct vehicular access to abutting property.
- (71) **Street line:** A dividing line between a lot, tract or parcel of land and a contiguous street.
- (72) **Structure:** Anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground.
- (73) **Structure, legal non-conforming:** A building, structure, or portion thereof, lawfully existing at the time of passage of this ordinance, but which does not conform in one or more respects to the regulations of this ordinance.
- (74) **Structural alterations:** Any change in the supporting members of a building or any substantial change in the roof structure or in the exterior walls.
- (75) **Sustained yield forestry:** The management of forested lands to provide annual or periodic crops of forest products.
- (76) **Swimming Pool:** A structure, above or at ground level, designed to hold water more than thirty (30) inches deep for the purpose of swimming.

## WAUKESHA COUNTY SHORELAND, FLOODLAND PROTECTION ORDINANCE

- (77) **Trailer:** See "mobile home."
- (78) **Trailer camp or mobile home park:** Wisconsin Statute [section] 66.058(1)  
"Mobile home park means any plot or plots of ground upon which two (2) or more units occupied for dwelling or sleeping purposes are located, regardless of whether or not a charge is made for such accommodations."
- (79) **Tourist home:** A building in which lodging, with or without meals, is offered to transient guests for compensation, and having no more than five (5) sleeping rooms for this purpose with no cooking facilities in any such individual room or apartment.
- (80) **Traffic artery:** Same as "highway."
- (80a) **Unnecessary hardship:** That circumstance where special conditions, which were not self created, affect a particular property and where, in the absence of a variance, no feasible use can be made of the land.
- (81) **Use, accessory:** A use subordinate to and customarily incident to the permitted principal use of the property or buildings and located upon the same lot as the principal use.
- (82) **Use, legal non-conforming:** The use of a building or land lawfully carried on-at the time of the passage of this ordinance or amendments thereto, but which does not conform to the use regulations established by this ordinance.
- (83) **Use, principal:** The main or primary use of property or buildings as specified and permitted by the regulations of the district in which it is located.
- (83a) **Variance:** An authorization granted by the board of adjustment to construct or alter a building, land or structure in a manner that deviates from the dimensional or numerical standards of this ordinance. The issuance of a variance shall not have the effect of allowing a use of property otherwise prohibited and shall not allow the intensification of a use which would otherwise not be allowed other property having a similar condition or situation. Such variance may not allow for a use which is not allowed in the Zoning District in which the property is located.
- (84) **Vision setback:** An unoccupied triangular space, at the street corner lot, as established by section 3.08. (Ord. of 11-5-84, §§ I, II: Ord. No. 141-44, §§ III-XVIII, 7-22-86)

### SECTION 3. GENERAL PROVISIONS

#### 3.01 Jurisdiction.



## **WAUKESHA COUNTY SHORELAND, FLOODLAND PROTECTION ORDINANCE**

The jurisdiction of this ordinance shall apply to all structures, land, and water including those lands under, abutting and lying close to navigable waters and within the unincorporated floodland and shoreland areas, as defined herein as Waukesha County, Wisconsin. Originally, the Waukesha County Board of Supervisors on June 23, 1970 adopted one (1) inch equals one thousand (1,000) feet individual township shoreland and floodland zoning maps as part of this ordinance.

These areas of jurisdiction are now redrawn and indicated on four (4) square mile aerial photographs at a scale of one (1) inch equals four hundred (400) feet and are made a part of this ordinance. As a result of ongoing large scale topographic mapping and survey project conducted under section 87.31 Wisconsin Statutes and pursuant to county needs, additional topography maps have been prepared and from time to time in the future, may be revised or added, at a scale of one (1) inch equals two hundred (200) feet with contour intervals of two (2) feet and are also made a part of this ordinance where said maps may contain greater detail and information relative to information pertinent to said shoreland and floodland areas. Together with the new one (1) inch equals four hundred (400) feet aerial photographs referenced above, and these maps amend and replace the original one (1) inch equals one thousand (1,000) feet small township zoning maps previously adopted and referred to above for the specific land areas covered within the area for which the shoreland and floodland jurisdiction has been shown thereon. A note to this effect for the areas so affected has been placed on the one (1) inch equals four hundred (400) feet scale photographs.

The boundaries of the shorelands, floodplains and floodways as shown, shall be those areas designated as such on the above referenced maps (1" = 400' aerial photos and 1" = 200' topographic) and on corresponding flood profiles published by the Federal Emergency Management Agency, Flood Insurance Study, effective date, August 1, 1983. The flood insurance study constitutes the basis for which the official floodplains and appropriate zoning categories for unincorporated Waukesha County has been mapped. This study has been approved by the Department of Natural Resources and the Federal Emergency Management Agency (FEMA), and is on file in the office of the County Zoning Agency. Where said flood insurance studies have not been provided, the approximate 100 Year Floodplain has navigable bodies of water as designated, using the best available information, on the 1" = 400' aerial photos or 1" = 200' topographic map.

Where a stream is subsequently identified or determined to be navigable, and was not previously subject to Shoreland and Floodland Ordinance jurisdiction, said navigable stream and the lands bordering it, which meet the Conservancy zoning district standards for mapping, shall immediately be subject to the jurisdiction of this Ordinance, including those requirements such as conservancy setback requirements and other water quality related issues. Subsequently, upon processing and approval of an amendment to include the entire area along said stream or water course within the shoreland jurisdiction and the holding of requisite hearings pursuant to the provisions of this Ordinance, all shoreland areas and provisions attendant thereto shall fall under the jurisdiction of this Ordinance. (Ord. No. 141-44, § XIX, 7-22-86)

### **3.02. Compliance.**

- (1) No structure or part thereof shall hereafter be located, erected, moved, reconstructed,

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extended, enlarged, converted or structurally altered and no land or water areas shall be hereafter used or altered within the floodland and shoreland areas of Waukesha County without either a zoning or conditional use permit where changes are being proposed and without full compliance with the provisions of this ordinance and other local, county, state, and federal regulations.

(2) No local permit for construction or development shall be issued within unincorporated shoreland and floodland areas of Waukesha County until the county zoning permit has been issued.

(3) Statutory Exemption for Farm Drainage Ditches: Under 87.30 (1m) and 144.26(2m) of the Wisconsin Statutes, a floodplain zoning ordinance does not apply to non-structural uses of lands (i.e., pasture, cultivation) adjacent to farm drainage districts if all of the following situations exists:

- A. Such lands are not within the floodplain of a natural stream or river.
- B. Those parts of the drainage ditches adjacent to these lands were non-navigable streams before ditching.
- C. Such lands are maintained exclusively in non-structural uses.

Under this Subchapter, should a question arise as to the applicability of this section, an interpretation shall be sought as provided for under Section 21.02 of this Ordinance or by the Wisconsin Department of Natural Resources. The submission of plans and supporting documentation shall be required to enable the staff or the DNR to make a finding to support the claim of exemption. Where farm drainage ditches exist and the agricultural uses are terminated, and the lands are changed to urban uses, this exception expires and the subject stream and shoreland and floodland areas shall fall under all provisions and the jurisdiction of this Ordinance.

However, regardless of the agricultural use of the land, any building and structure is subject to the provision of this Ordinance relative to size, location or other matters relating to building and structures.

### **3.03. Zoning, occupancy and use permits.**

**(1) Zoning, occupancy and use permits:** No structure, land or water or part thereof located in the unincorporated shoreland or floodland areas of Waukesha County shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted or structurally altered until: first, a county sanitary permit has been issued, where applicable, by the county health department unless municipal sewer is available in which case no sanitary permit is required; and second, a county zoning permit has been issued by the county zoning administrator, certifying that such activity complies with the provisions of this ordinance; and third, a conditional use permit, where applicable, has been issued by the county zoning agency certifying that such activity complied with the provisions of this ordinance. Such permits shall be obtained before any change is made in the type of use or before any nonconforming use is resumed, changed, extended or granted conditional use status pursuant to section 3.15 of this ordinance. Within shorelands, all land owners, state

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agencies and other governmental jurisdictions unless specifically exempted by section 13.48(13) Wisconsin Statutes, are required to comply with the provisions of this ordinance. However, where the substantive terms and objectives of this ordinance have been addressed and fulfilled by the Wisconsin Department of Natural Resources where concurrent (DNR and county), jurisdiction with this ordinance exists so as to avoid duplication of effort, the terms of this ordinance shall not be imposed. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation or other roads and highways as may be under federal jurisdiction or receiving federal aid, may be exempt pursuant to section 30.12(4)(a) Wisconsin Statutes.

**(2) Application for:** Zoning, occupancy and use permits shall be obtained from the county zoning administrator or designated deputy to the county zoning administrator as provided by section 20.02. Application shall be made prior to or at the same time as the application for a building permit, and shall be prepared in triplicate and shall include for the purpose of proper enforcement of this ordinance the following data:

- (A) A statement by the applicant as to the intended use of the premises and of any existing or proposed buildings thereon.
- (B) An accurate map of the property, in triplicate, drawn to a reasonable scale and properly dimensioned showing:
  - 1. The boundaries of the property involved.
  - 2. The location of the centerline of any abutting streets.
  - 3. The location on the lot of any existing buildings, proposed additions, or proposed new buildings, including the measured distances between such buildings and from the lot lines and from the centerline of any abutting street to the nearest portion of such building.
  - 4. The location of any existing structures, septic systems or wells within fifty (50) feet of the boundaries of the property involved.
  - 5. The proposed first floor elevation of any proposed buildings in relation to the existing and/or established grades of the lot, any abutting streets, and the average annual high water line of abutting streams, rivers or lakes.
  - 6. The high water line of any stream or lake on which the property abuts.
  - 7. The proposed location of private septic systems and private wells in areas not served by public sewage disposal systems and public water supplies and the location and results of soil borings and percolation tests.
- (C) Where the use involves human occupancy or use, and where such use is not served

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by sanitary sewer and water, a county sanitary permit shall be required prior to issuance of the county zoning permit.

- (D) A fee, as may be established and periodically modified under section 20.01(4) shall accompany each application. Such fee shall be paid by cash, check or money order to the Waukesha County Park and Planning Commission.

**(3) Issuance:** Zoning and occupancy and use permits shall be issued by the zoning administrator after adequate investigation as to compliance or upon recommendation of the deputy where he has made the necessary investigation.

- (A) **Zoning permit:** Provided the application is in order and any building, occupancy, or use as proposed would be in compliance with the provisions of this ordinance, a zoning permit shall be issued upon such application, and a certification that such permit has been issued shall be posted in a prominent place on the premises during the period of any construction or other activity involved in readying the land or buildings for use occupancy.
- (B) **Occupancy and use permit:** Within ten (10) days after the notification of the completion of the erection, alteration or relocation of a building, or of intent to commence a use, the zoning administrator or his deputy shall make an inspection of the premises and any buildings thereon; and, if such building, intended use, or proposed occupancy complies with the requirements of this ordinance, an occupancy and use permit shall be issued.

**(4) Expiration:** If within six (6) months of the date of issuance of a zoning permit, the proposed construction or preparation of land for use has not commenced, or if within eighteen (18) months an occupancy and use permit has not been issued, if required by the Town, of the construction has not been completed, said zoning permit shall expire, except that upon showing of valid cause, the Zoning Administrator may grant an extension of such permit for a period not to exceed six (6) months. Said permit extension shall be issued for the full fee and based upon full conformance with the ordinance at the time of issuance for the new permit. IF the construction has not commenced or is not completed after a total of twenty-four (24) months, a new permit must be applied for and received subject to all fees and subject to the Ordinance in effect at the time of such new permit issuance. Previous incompleted work is not entitled to a new permit if the ordinance no longer permits said use or structure or if changes to the Ordinance have been made subsequent to the original issuance of the permit.

**(5) Temporary occupancy and use permit:** Pending the issuance of a regular permit, a temporary permit may be issued for a period not exceeding six (6) months during the completion of alterations or during partial occupancy of a building pending its permanent occupation. Such temporary permit shall not be issued except under such restrictions and provisions as will adequately insure the safety of the occupants. A temporary permit shall be voided if the building fails to conform to the provisions of this ordinance to such a degree as to render it unsafe for the occupancy proposed. A minimum requirement shall be the installation of sanitary facilities which

have been approved by the county health department. (Ord. No. 141-44, § XX, 7-22-86)

**(6) Zoning and Occupancy and Use Permits - Site Plans and Plans of Operation:**

Certain permitted uses as well as certain Conditional Uses require the submission of site plans and plans of operation which provide a detailed description of the proposed use and serve as a basis for Plan Commission and County Zoning Agency consideration prior to approval. The purpose of such a site plan and plan of operation review is to document the permit file, determine adequacy of the data submitted to describe the permitted and accessory uses and buildings proposed and document the plan and method of operation to enable a determination of compatibility with the Ordinance and consideration of approval. Such site plans and plans of operation shall be reviewed and approved by the Town Plan Commission and County Zoning Agency and include, without limitation because of enumeration, a scaled map showing all buildings and other attributes either existing or proposed on the site, parking lots and spaces, lighting fixtures, easements, signage, description of uses in detail, number of employees, hours of operation, types of uses, grading and excavation where proposed, and shall be required in all Business and Industrial Districts and required in the conditional use permit application.

**3.04. Site regulations.**

**(1) Building must be on a lot:** Every building hereafter erected, structurally altered or relocated shall be located on a lot as defined herein. Any building used for the principal use permitted in that district shall constitute the principal building and there shall be no more than one (1) principal building on a lot except in business districts, industrial districts, planned unit developments, and agricultural districts. In the agricultural district no more than one (1) residence may be permitted on a single parcel of land unless it can be demonstrated that more than one (1) residence is necessary and accessory to the principal agricultural use of the property. The board of adjustment may grant an exception to permit more than one (1) principal building on a lot in any district where such grant would not be contrary to the spirit and intent of the ordinance, and provided that sufficient lot area is provided and the building so located so as to individually meet the setback, offset, and lot size and open space requirements of the district in which it is located. No accessory building shall be constructed until the principal building is under construction or completed. Where the use of the land is principally for agricultural pursuits, and on parcels of thirty five (35) acres or more, such farm buildings may be allowed without the necessity of having a residence in place or under construction subject to approval of the planning commission and county zoning agency if it is determined that the building will not be contrary to the spirit and intent of the ordinance and will not include the operation of a commercial boarding or riding stable for horses or agricultural pursuits specializing in the forced feeding of livestock and where it is determined that the use of the building will be accessory to a farming operation which is consistent with the use provisions of the district in which it is located.

**(2) Buildings or Creation of Lots on a Private Street or Way:** The intent of this provision is to discourage the creation of lots and placement of structures which do not have adequate access for emergency vehicles and equipment and to provide a right-of-way width which could accommodate a public right-of-way, if necessitated in the future. Subject to the approval of

the Plan Commission and the County Zoning Agency, a parcel may be created and a building may be permitted on a tract of land which does not abut or have direct frontage on a public street or officially approved way (frontage on a controlled access highway or a freeway where vehicular access is prohibited does not constitute access or frontage for the purposes of this provision) provided such tract of land is at least three (3) acres in area and has a minimum average width of two hundred (200) feet, has access by a permanent easement at least thirty-three (33) feet in width to a public street or way, will have a paved or gravel driveway width of at least twelve (12) feet, unless a local ordinance is in effect which requires a greater width, and does not conflict with the plans for the future development of streets in the area.

Typical or normal lots with lot lines radiating from the terminus or center of a public cul de sac street are not affected by this provision that requires minimum road frontage on a public street. In a situation where more than one (1) principal residence or parcel is proposed, the easement for access shall be at least sixty-six (66) feet in width and the paved or gravel drive shall be sixteen (16) feet in width, unless required to be greater pursuant to a local ordinance. Where such a lot has a narrow strip of land as part of the lot (not as an approved easement) extending to the public road from the main part of the lot where the building could lawfully be placed (flag lot), such narrow portion shall not constitute frontage or part of the three (3) acre lot size requirement unless that narrow portion of the lot is as wide as the required minimum average width for the district in which it is located. Not more than two (2) such parcels or buildings shall be permitted unless necessitated by exceptional circumstances.

**(3) No undesirable Structures, Materials, Vehicles:** No building or structure, shall be erected, structurally altered or relocated, and no lumber, materials, vehicles furniture or other equipment or vehicles or similar articles shall be stacked, piled, or stored in a manner which shall be of such character as to adversely affect the property values and general desirability of the neighborhood. A motor vehicle, or other item such as a snowmobile, or other vehicles and motorized or intended to be motorized equipment, which is unlicensed, abandoned, disassembled, non-operative, disabled, junked or wrecked shall not be stored anywhere on any premises except in an authorized salvage yard or unless it is completely enclosed in a structure.

(A) The zoning administrator or his deputy shall review any such case in question and/or may commence legal action to bring about conformance.

(B) The determination shall be based upon the following considerations:

1. Design or appearance of such unorthodox or abnormal character as to have a substantial adverse effect on the property values and general desirability of the neighborhood.
2. A degree of similarity in design, style and appearance as to have a substantial adverse effect on the property values and general desirability of the neighborhood.
3. The nature of and usefulness and appearance of articles, or vehicles stored and whether those objects have any adverse effect on surrounding or adjacent

property.

- (C) The decision of the Zoning Administrator or Deputy shall be stated in writing, including the reason for refusing a permit or any conditions of approval.

**(4) Street grade:** Every building hereafter erected, structurally altered, or relocated shall be at a grade approved by the deputy zoning administrator as being in satisfactory relationship with the established street grades, or with the existing street grade where one is established, with particular consideration for proper trainage, safe vehicular access, and flood hazards.

**(5) Preservation of Topography:** In order to protect property owners from possible damage due to changes in the existing grade of adjoining lands, and to aid in preserving and protecting the natural beauty and character of the landscape, the following regulations, unless exempted by Wisconsin Statutes or other sections of this Ordinance shall apply:

- (A) Within floodlands--as defined in this Ordinance, onsite sewage disposal facilities are prohibited unless authorized specifically by another provision of this Ordinance. The placement of fill, excavation, and/or other earth moving activities other than those situations covered under the provisions of Section 3.04(5)(D), may be allowed subject to approval pursuant to Section 3.07(7)(I) of this Ordinance where said fill, excavation, or earth moving activities do not occur in a wetland as indicated on the final Wisconsin Inventory Maps for Waukesha County, except as may be permitted pursuant to Section 5.03 of this Ordinance. Further, if said fill or earthmoving is authorized, the land shall be rezoned to an appropriate district in accordance with the procedures outlined in Section 18 of this Ordinance. Where and when allowed, these activities must not impede drainage, reduce the flood water storage capacity of the floodland or result in an increase regional flood height. The 100 Year Flood stage elevation standard is based on the assumption that there will be an equal degree of encroachment extending for a significant reach on both sides of the stream.

When an alteration of the floodlands is allowed, said alteration shall not result in an increase in flood heights of .01 of a foot. Said increase shall be determined using contemporary and state of the art methods of determination and when any increase would result in an amount greater than .01 of a foot, said increase may not be allowed and the rezoning not approved unless compensating storage capacity of the floodplain is provided in a manner which is not deleterious to other property or the quality of any wetlands.

Dredging and pond construction are also conditional uses where allowed and in addition, may require permits from the Wisconsin Department of Natural Resources or the U. S. Army Corps of Engineers.

1. Any structure or building used for human habitation (seasonal or permanent), which is to be erected, constructed, reconstructed, structurally altered or moved into the floodplain and where the floodplain has been authorized to be filled pursuant to Section 3.08(7)(I) shall be placed on fill with the finished

surface of the lowest floor, excluding basement or crawlway, at or above the flood protection elevation. If any such structure or building has a basement or crawlway, the surface of the floor or the basement or crawlway shall be at or above the regional flood elevation and shall be floodproofed to the flood protection elevation and so that floodwater cannot enter directly over the ground surface into such floor, basement or crawlway. A special exception may be granted to allow any floor below the regional flood elevation if the ground surface around the subject structure is at or above the flood protection elevation for a distance at least 15' from the structure.

2. For all uses under this Subsection:

- a. Fill shall be not less than one (1) foot above the regional flood elevation;
- b. Fill shall extend at such elevation at least fifteen (15) feet beyond the limits of any structure or building erected thereon.
- c. Dryland access shall be provided. If existing streets providing access to the project site are at elevations in which the project is located, which make compliance impractical, the municipality may permit new development and substantial improvements where access roads are at an elevation lower than the regional flood elevation, provided the municipality has a state natural disaster plan which has been concurred in by the division of emergency government and approved by the DNR or the municipality has written assurance from the appropriate units of police, fire, and emergency services that rescue and relief can be provided by wheeled vehicles to the structure during regional flooding, taking into account the anticipated depth, duration and velocity of the regional flood event in the area, thereby protecting human life and health and minimizing property damage and economic loss.

- (B) Within shorelands--grading, clean fill disposal sites, topsoil removal, filling, alteration or enlargement of waterways, removal or placement of stream or lake bed materials, excavation, channel cleaning and clearing, ditching, drain tile laying, dredging, lagooning and soil and water conservation structures are conditional uses and must be approved in accordance with Section 3.07(I) of this Ordinance except as may be exempted in Sections 3.04(C) and (D) and as may be prohibited in shoreland/wetlands pursuant to Section 5 of this Ordinance. However, agricultural uses, ditching, impoundments and draining required approval pursuant to Section 5.03(1) of this Ordinance. In addition, such uses may require a permit from the state agency having jurisdiction pursuant to Chapter 30 of the Wisconsin Statutes and, where applicable, a federal permit from the U.S. Army Corps of Engineers except as may be waived pursuant to Section 3.03(1) of this Ordinance. All such uses and activities shall be consistent with the uses permitted in the Conservancy/Wetland



district if they occur within that district.

- (C) No change in the existing topography or drainage courses on any land shall be allowed which will result in adversely altering the drainage or increasing any portion of the existing slope through fill and/or grading to a ratio greater than three (3) horizontal to one (1) vertical. The construction of a retaining wall (stone, ties, brick or other material), five (5) feet or less from a property line, may be specifically authorized by the Planning Commission and County Zoning Agency and an agreement made between said Planning Commission and Zoning Agency and applicant stating that the method and purpose of construction will not in any way adversely affect drainage or aesthetics of the adjacent lot. A retaining wall greater than five (5) feet from a property line, may be allowed pursuant to issuance of a Zoning Permit as long as said wall will serve to promote the purpose and intent as stated in this Ordinance. All retaining walls, unless constructed to abate a known and identified soil erosion and sedimentation problem, shall be located not less than seventy-five (75) feet from the ordinary high water mark.

Fill or grading considered by the Zoning Administrator to be necessary backfill and/or excavation for an otherwise permitted structure may be permitted without the necessity of securing a conditional use permit as long as said fill or grading is accessory to said construction and does not create slopes greater than three (3) horizontal to one (1) vertical and does not extend to a distance greater than thirty (30) feet from the foundation and does not divert runoff directly onto adjacent property or adversely affect adjoining property. In order to make such a determination, the property owner shall submit a grading plan of existing and proposed grades on the subject lot and adjacent lands where said accessory fill and/or grading is closer than twenty (20) feet to a property line.

Land altering activities extending greater than thirty (30) feet from the foundation may be allowed subject to issuance of a minor grading permit (zoning permit) as provided for in Section 3.04(5)(D) without benefit of a Conditional Use Permit unless the quantities and the area of fill and grading exceed those limits defined herein for minor grading, filling and land altering activity. This provision excludes the area normally associated with septic system installation and normal driveway construction.

Further, no fill or alterations on existing topography shall be allowed under any circumstances which will alter the drainage or topography in a way which will adversely affect the surrounding lands. In making such a determination, the Zoning Administrator shall have the authority to determine the affect of the construction or fill on surrounding property and require improvements and/or facilities as may be in the best interest of preserving the topography and drainage system and which will have the effect of lessening the impacts on either upstream, downstream or adjacent properties. In case of a dispute or question arising as to the adversity or affect of the project on either the property owner, adjacent owners or the general public, said question shall be submitted to the Board of Adjustment for resolution to the

question. Land altering activities may also be subject to locally adopted or State mandated Erosion and Sediment Control ordinances in addition to the requirements set forth herein.

(D) **Land Alteration, Streambank and Shoreline Stabilization:** Streambank and shoreline stabilization structures and minor grading, filling and land altering activities as defined herein, excluding retaining walls and fill within seventy-five (75) feet of ordinary high water mark and in the 100 Year Floodplain may be permitted administratively in Shoreland areas and without a Conditional Use Permit and in conformance with best management practices promulgated by the Department of Parks and Land Use, Land Conservation Division (formerly the Department of Environmental Resources) when located outside of Conservancy/Wetland areas, and within the 100 Year Floodplain and where the site is above the ordinary high water mark, subject to the following:

1. Said project may be authorized administratively through the granting of a minor grading permit (zoning permit) when the following standards are satisfied:
  - a. submittal of a complete and accurate set of plan which include a contour map at a scale of not less than 1" = 200' at a contour interval of at least two (2) foot increments, a vegetation plan and schedule, the period of construction activity, the methods used during and after construction to provide protection from the forces of erosion and sedimentation upon adjacent land and waterbody, and how the project will relate to adjoining property.
  - b. An administrative determination that the project has no public impact on or will not adversely affect adjacent or surrounding properties and that the activity will serve to prevent erosion and sedimentation of the surrounding area on the adjacent waterbody.
  - c. The review and written approval, if necessary, of the Wisconsin Department of Natural Resources.
  - d. Entering into a stipulated agreement with the County and the Town concerning the scope of work, type of material used, method of construction, final grades, re-establishment of vegetative cover, date of completion and any other items deemed appropriate.

**(6) Building restriction:** In the shoreland and floodland areas, the following building restrictions shall apply:

(A) With floodlands:

1. Within floodland areas, no building of any kind shall be allowed except those that may be allowed in the C-1 conservancy/wetland or the EFD existing

floodland development district and boathouses provided for in section 3.19. Structures not prohibited above shall meet the following requirements:

- (a) The structure, including any fill, roads and levee's, shall not adversely affect the efficiency or the capacity of the floodway, the storage capacity of the floodplain, or increase flood heights based on the assumption that will be an "equal degree of encroachment" extending for a significant reach on both sides of the stream;
  - (b) The structure shall have its lowest floor level no less than the flood protection elevation;
  - (c) The structure will not obstruct the floodway or channel of the stream.
  - (d) The ground level surrounding the structure shall be elevated and filled to at least one (1) foot above the 100 Year Recurrence Interval Flood for a horizontal distance of not less than fifteen (15) feet from the outer face of the building walls unless said requirement is not possible, in which case, to an amount as close to the fifteen (15) foot requirement as is practical.
  - (e) Any structure within the stream channel shall require a state permit pursuant to chapter 30 of the Wisconsin Statutes and may require a federal permit pursuant to applicable federal regulations.
  - (f) A registered professional engineer or land surveyor shall certify that the finished building elevations, floodproofing measures, and other flood protection factors were accomplished in compliance with the above provisions of this ordinance.
  - (g) The board of adjustment may grant a variance from these regulations only if the structure will meet the standards set forth in chapters NR115, NR116, and H63 of the Wisconsin Administrative Code.
  - (h) Dam construction, operation, maintenance, and abandonment are uses requiring public hearing before the county zoning agency and town plan commission in accordance with section 3.07 of this ordinance and may require permits from the state department of natural resources pursuant to chapter 31 of the Wisconsin Statutes and from the U.S. Army Corps of Engineers pursuant to federal requirements.
2. The placement of fill, excavation, and other earth moving activities in excess of those provisions of Section 3.04(5)(D) may be allowed subject to approval pursuant to Section 3.07(7)(I) and rezoning in accordance with Section 18, where necessary, of this Ordinance and as long as said fill, excavation or earth moving activities do not occur in a wetland as indicated on the Final

Wisconsin Wetlands Inventory Maps for Waukesha County or subsequently revised by hydraulic analysis and approved by the Army Corps of Engineers and/or the Department of Natural Resources, unless said wetland is rezoned. The performance of such earth altering must not impede drainage, reduce the floodwater storage capacity of the floodland, raise flood stages by more than 0.01 ft. as regulated by Section NR116 or cause ponding. If an increase would result, compensating flood storage capacity shall be provided on the site. This is based on the assumption that there will be an equal degree of encroachment extending for a significant reach on both sides of the stream. Dredging and pond construction are also conditional uses where allowed and in addition may require a permit by the State Department of Natural Resources pursuant to Section 30.19 of the Wisconsin Statutes and where applicable, a federal permit from the U.S. Army Corps of Engineers.

Any petitioner shall provide proof of plan submission, review and either approval or waiver of approval from the Wisconsin Department of Natural Resources and the Army Corps of Engineers prior to the County Zoning Agency taking official action.

Where such modification is proposed, the following criteria shall apply:

1. If the use of the altered area is contemplated to be changed as a result of the fill or excavation, the area shall be rezoned to an appropriate use category and a Conditional Use Permit issued pursuant to the terms of this Ordinance. No increase in regional flood height greater than the standard set forth above in Section (3.04(6)(A)2) shall result from these activities.
  - a. Criteria For Redelineation or Rezoning Floodplain Boundaries: Prior to redelineation of floodplain boundaries or rezoning any such areas, the applicant shall:
    - (1) Submit adequate technical data to the Zoning Administrator who will submit such data to the Department of Natural Resources for review and concurrence on the effect of the proposed amendment on the height of the regional flood that no increase in the 100 Year Floodplain elevation will result.
    - (2) Assure that the proposed amendments meet the purpose of Wisconsin Administrative Code.
  - b. Amendment Process: Where the area is to be altered or filled and upon completion of the steps in par. (a), the County shall meet all legal requirements for amending its zoning maps and zoning ordinances as needed and as established in Section

NR116 of the Wisconsin Administrative Code.

- c. **Submission to the Department of Natural Resources for Approval:** If the County agrees to amend the zoning category and modify the zoning map, it shall submit these amendments and the plans for fill or alteration of the subject area to the Department of Natural Resources for approval pursuant to Section NR116. Prior to Department of Natural Resources approval, the applicant shall submit a final map to be certified by an engineer, that the fill or alteration as approved by the Zoning County has been accomplished to the specifications set forth by the amendment approved by the County.
2. The effect of rezoning, filling and altering any floodplain shall be calculated by comparing the regional flood profile determined by the hydraulic floodway lines to the regional flood profile determined by assuming that the entire shallow depth flooding area (100 Year Floodplain) is not available to convey floodflows. Calculations shall conform to the standards contained in Section NR116 of the Wisconsin Administrative Code.
  3. Where a floodplain or wetland alteration has been approved as outlined above, the jurisdiction of this Ordinance remains in effect within the subject area to the extent it was in effect prior to the activity being authorized and all other appropriate restrictions of the Shoreland and Floodland Protection Ordinance except those which deal with floodplains and/or conservancy wetlands if the areas are removed from such floodplains or wetlands remains in force.
- (B) **Within shorelands:** All filling or dredging on the bed of navigable waters may take place only with a state permit pursuant to chapter 30 of the Wisconsin Statutes and a conditional use permit from the county zoning agency and the town plan commission as detailed in section 3.07 of this ordinance and a federal permit from the U. S. Army Corps of Engineers where applicable.
- (C) **Within floodlands and shorelands:** Utility facilities such as dams, flowage areas, transmission lines, pipelines and water monitoring devices are permitted subject to regulations pursuant to this ordinance, chapter 30 of the Wisconsin Statutes and applicable federal regulations. Noncommercial docks, piers, wharves and bridges, culverts and river crossings of transmission lines, gas lines and other utilities are permitted subject to any pier or dock line regulations, or any other regulations which may be required pursuant to chapter 30 of the Wisconsin Statutes and applicable federal regulations. Commercial docks, piers, moorings and wharves as defined in section 2.02(44), are permitted subject to issuance of a conditional use permit under section 3.07(7)(L) or (R) of this Ordinance.

**(7) Agricultural uses:** Sod farming, tillage, grazing, livestock watering and feeding and application of fertilizers shall be prohibited unless conducted in accordance with good soil and water conservation practices promulgated by the U.S.D.A. Soil Conservation Service in its technical guide. Crop production on lands with an erosion factor of three (3) or more on the U.S.D.A. Soils Map is prohibited and such lands shall be planted to permanent vegetation. Where agricultural uses, including grazing, occurs next to navigable water, in accordance with sound land management practices, a buffer strip of permanent vegetation not less than one (1) rod (16 1/2 feet) wide, should be maintained where possible, to protect the bank of the waters from erosion and the effects of weathering and the water from the effects of sedimentation and pollution.

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**(8) Surface Water Withdrawal:** Diversion, or discharge for irrigation, processing, cooling, or other purposes are Conditional Uses requiring review and approval by the County Zoning Agency in accordance with Section 3.07 of this Ordinance. The Zoning Agency shall then advise the State Agency having jurisdiction under Sections 30.18 and 144.025(2) of the Wisconsin Statutes of its findings prior to the issuance of the required State permits and federal permits as may be required by the U.S. Army Corps of Engineers.

When the substantive terms of this provision are met through the application of the Wisconsin Statutes, Department of Natural Resources Administrative Code or the requirements of the U.S. Army Corps of Engineers, a separate action of the County Zoning Agency pursuant to Section 3.03(1) of this Ordinance is unnecessary.

**(9) Purpose:** The purpose of **tree and shrubbery cutting regulations** applicable to the shoreland area is to protect scenic beauty, control erosion and reduce effluent and nutrient flow from the shoreland. The provisions shall not apply to the removal of dead, diseased or dying trees or shrubbery at the discretion of the landowner, or to silvicultural thinning upon recommendation of a forester.

- (A) **Shoreline cutting:** Tree and shrubbery cutting in an area parallel to the ordinary high water mark, and extending thirty-five (35) feet inland from all points along the ordinary high water mark, shall be limited in accordance with the following provisions:
  - (1) No more than thirty (30) feet in any one hundred (100) feet, as measured along the ordinary high water mark, may be clear cut to the depth of the thirty-five-foot area.
  - (2) Natural shrubbery shall be preserved as far as practicable and, where removed, it shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion and preserving natural beauty.
- (B) **Paths:** Any path, road or passage within the thirty-five-foot area shall be constructed and surfaced so as to effectively control erosion.

- (C) **Cutting plan:** As an alternative to subsection (A) above, a special cutting plan allowing greater cutting may be permitted by the board of adjustment by issuance of a special exception as defined herein. An application for such a permit shall include a sketch of the lot providing the following information: Location of parking, topography of the land, existing vegetation, proposed cutting, and proposed replanting. The board may grant such a permit only if it finds that such special cutting plans:
- (1) Will not cause undue erosion or destruction of scenic beauty, and
  - (2) Will provide substantial visual screening from the water of dwellings, accessory structures and parking areas. Where the plan calls for replacement plantings, the board may require the submission of a bond which guarantees the performance of the planned tree or shrubbery replacement by the lot owner.
- (D) **Cutting more than thirty-five (35) feet inland:** From the inland edge of the thirty-five-foot area to the outer limits of the shoreland, the cutting of trees and shrubbery shall only be allowed when accomplished using accepted forest management and soil conservation practices which protect water quality.

**(10) Adequate drainage required:** In no case may a principal building be located in an area zoned conservancy or in an area considered to be one of the eight (8) types of wetlands (type 1-8) as described in Circular 39 of the Fish and Wildlife Service, U. S. Department of Interior published in 1956, and which are on record on the 1975 aerial maps of the Southeastern Wisconsin Regional Planning Commission. No principal building shall be erected, structurally altered or relocated on land which is not adequately drained which has an observed or estimated high ground water table condition or having soil which may have a seasonal-zone of water saturation as may be determined by use of U. S. D. A. soil survey, an onsite soil investigation by a certified soil tester or other qualified engineer or soil scientist, unless adequate measures are taken to protect the building, its basement and its foundation from such water conditions. The identification of mottled characteristics in the soil profile may be utilized to identify soil conditions which may require additional protective measures as outlined below. Where soil monitoring tests have been made, the data resulting from such testing procedures may also be utilized to assist in establishing soil conditions requiring protective measures. Normally, a few faint mottles or a very low incidence of mottling will not necessitate any special consideration. Basements will be allowed to extend into such soils where those conditions exist as long as appropriate construction measures are provided. Where the incidence of mottling is considered very severe or where ground water is observed in the soil profile, no basement area will be allowed to be placed below the level at which such a condition exists. The zoning administrator and/or building inspector may review such conditions by observation and other evidence at the building site and shall require appropriate measures to be taken beyond normal footing drains as normally required by local building codes to adequately protect the building and its basement and foundation from such potential water related problems. The zoning administrator and/or building inspector may request at the owners expense the advice and assistance of a licensed professional engineer specializing in soils engineering or other qualified

person in fulfilling their duties pursuant to this provision.

- (A) The zoning permit and building permit issued for the erection, structural alteration or relocation of a principal building shall state specific design, engineering and construction requirements, as a condition of the permit, notwithstanding applicable construction codes, which must be incorporated within the improvement to be done on and in soil which has such conditions necessitating additional protection of the building, basement, foundation, occupants and personal property. Such provisions which may be required may include but shall not be limited to the techniques enumerated below: auxiliary power supplies; gravity drainage of foundation footings together with the installation of a normal sump pump which will be operative in the event of blockage of the gravity drains; gravel backfill and extra drains; waterproof poured concrete basements.
- (B) Subdivision plats and certified survey maps shall state, on their face, whether protective measures, pursuant to the above are likely to be required as a condition of a zoning and building permit. The planning commission or the county zoning agency may cause such notice to be affixed to the face of the document.
- (C) In the event a dispute arises as to the necessity for or the adequacy of the protective measures set forth above, the matter shall be reviewed by the Waukesha County Board of Adjustment pursuant to the appeal provisions of this ordinance.  
(Ord. No. 141-44 § XXI-XXVIII, 7-22-86)

\_\_\_\_\_(11) **Site Protection:** Any property disturbed with land altering activities as may be authorized through the issuance of a Zoning Permit or a Conditional Use Permit, shall be required to protect the disturbed land surface of the lot or building site that is susceptible to erosion while under construction and which are not occupied with buildings, dedicated parking areas or other hard surfaced areas with suitable stabilization measures. Said disturbed areas shall be permanently stabilized and continuously maintained with suitable vegetative cover or other approved landscape material, and in any case, shall be required to conform with the provisions of the Waukesha County Construction Site Erosion Control Ordinance #146-158. Bonding or other forms of financial guarantee to ensure performance may be required by the Planning Commission, the Zoning Administrator or the Department of Parks and Land Use, Land Conservation Division.

### **3.04a. Use regulations.**

\_\_\_\_\_(1) **Uses Restricted:** In any district, no building or land shall be used and no building shall be hereafter erected, structurally altered or relocated except in conformance with the regulations hereinafter established for the district in which the property is located, or as otherwise provided in this Ordinance. Where a change in use, change of ownership or operator or a new use (excluding change in owner or operator) of a building or premises is proposed in any Business or Industrial District, a Plan of Operation and Site Plan shall be prepared for review and approval as may be required pursuant to other Sections of this Ordinance.



(2) **Accessory uses:** In any district, accessory buildings and uses customarily incident to the permitted uses in that district shall be permitted subject to such requirements as may be hereinafter designated for that district in which they are located. No pyramiding as defined herein shall be permitted on any lands fronting on a lake except as may be specifically permitted accessory to a marina or resort and which may be allowed under the terms of a conditional use permit for a planned unit development.

\_\_\_\_\_(3) **Unclassified Uses:** Any use not specifically listed as a permitted use or conditional use, shall be considered to be prohibited except as hereinafter provided. Where deemed appropriate, the Plan Commission and Zoning Administrator shall have the authority to authorize uses not specifically enumerated herein under the terms of Section 3.08(7)(W) of this Ordinance and shall state in writing, the justification for allowing or denying said application for conditional use.

(4) **Additional Requirements:** For any use or structure in any district, which becomes hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood, the owner or occupant may be required to correct, improve or abate such conditions by such measures as may be mutually directed by the Plan Commission and Zoning Administrator consistent with reasonable technology and economic practicality and in conformance with reasonable standards or may be determined by the Plan Commission and Zoning Administrator as may be contained in this Ordinance. Any building determined to be unfit for human habitation or which may endanger the health, safety and welfare of the public as may be determined by the Town board after recommendation by the Plan Commission or Zoning Administrator may be removed pursuant to the procedures outlined by the Wisconsin Statutes.

(5) Any residence whose design includes provisions or is intended to be used, for more than one single housekeeping entity as defined herein, shall be considered a multiple dwelling as defined herein and are allowed only as conditional uses as provided for in Section 3.07 of this Ordinance.

### **3.05. Sanitary regulations.**

(1) No building, structure, area or premise shall be constructed, structurally altered, located or maintained for human occupancy, use or assembly without adequate facilities for the sanitary and safe disposal of all human excreta together with all liquid and solid wastes that could be hazardous to the public health and safety or create objectionable nuisance conditions. Such facilities must fully comply with the provisions of the Waukesha County Community Health Code. **(Cross reference-Community health code, App. E.)**

(2) No county zoning permit shall be issued until a safe and adequate water supply and sewage disposal system is assured and until after the county sanitary permit has been issued. No occupancy and use permits shall be issued for a building used for residential purposes unless provisions have been made in accordance with the requirements of the Waukesha County Community Health Code. **(Cross reference-Community health code, App. E.)**

(3) **Outhouses prohibited:** No outhouse or privy shall be hereafter erected.

**\_\_\_\_(4) Reduction in Lot Size, Lot Width, Offset, Road Setback, Open Space and Increase in Floor Area Ratio and Increase in Density in Planned Unit Development:** In the case of any lot proposed to be served by a municipal or municipally approved communal sewage system or water system, and where such service would be provided prior to any occupancy of such lot, the Zoning Administrator and Planning Commission may authorize the reduction of the lot size, lot width, open space, offset and road setback requirements applicable to such lot and increase the floor area ratio and increase the density in planned unit developments without the necessity of public hearing. In making the decision, the Zoning Administrator and Planning Commission shall give particular consideration to the following:

- a. The suitability of soil, terrain and groundwater table conditions and the practicality or providing municipal sewer or water service to the parcel.
- b. The effect of any reduction in the lot size, lot width, open space, road setback and offset requirements and the increase in floor area ratio and density requirements on the character and value of surrounding development.

The maximum amount of reduction in the lot size, lot width, open space, offset and road setback requirements, or increase in floor area of individual lots, and the maximum increase in the density of planned unit developments shall not exceed 30%. Where both municipal sewer and water is provided, the lot area requirements for the individual lots may be reduced to not less than twelve thousand (12,000) square feet, except as provided for multi-family type units and planned unit development in Sections 3.07(7)(O) and (Q).

### **3.06. Water performance standards.**

**(1) Compliance:** This ordinance permits specific uses in specific districts; and these performance standards are designed to limit, restrict, and prohibit the effects of those uses outside their premises or district. All structures, lands and waters shall hereafter, in addition to their use, site, sanitary, floodland and shoreland regulations, comply with the following performance standards.

**(2) Water quality protection:** No activity shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity, or temperature that might run off, seep, percolate, or wash-into surface or subsurface waters so as to contaminate, pollute, or harm such waters; or cause nuisances such as objectionable shore deposits, floating, or submerged debris, oil, or scum, color, odor, taste, or unsightliness; or be harmful to human, animal, plant, or aquatic life.

**(3)** In addition, no activity shall withdraw water or discharge any liquid, gaseous, or solid materials so as to exceed the minimum standards and the application of those standards set forth in chapters NR102, 103 and 104 of the Wisconsin Administrative Code, and applicable standards of any federal agency for all interstate and intrastate surface waters of Waukesha County.

In addition, the following water quality standards, as set forth in chapter NR102 of the Wisconsin Administrative Code, shall be maintained:

- (A) Minimum standards.
- (B) Recreational standards-full body contact recreational uses.
- (C) Fish and aquatic life.

### **3.07. Conditional uses.**

(1) **Approval required:** Certain uses and situations which are of a special nature, or are so dependent upon actual contemporary circumstances as to make impractical the predetermination of permissibility or the detailing in this ordinance of the specific standards, regulations, or conditions which would permit such determination in each individual situation, may be permitted as conditional uses.

(2) **Application:** Application for conditional use permits may be made by an individual property owner or group of owners or by a municipality, lake management district, sanitary district or similar agency on behalf of a larger property area where said proposal may benefit a larger group or entire community. Application shall be made in triplicate to the county zoning administrator [and shall include]:

- (A) A map (preferably a topographic map) in triplicate, drawn to a scale of not less than two hundred (200) feet to one (1) inch, showing: the land in question; its legal description and location; location and use of existing buildings, sanitary systems and private water supplies on such land; the high water elevation of any navigable waters within one hundred (100) feet of the boundaries of the land in question; the proposed location and use of any buildings; sanitary systems and private water supplies on such land and within one hundred (100) feet of the land in question.
- (B) Names and complete mailing addresses, including zip codes, of the owners of all properties within three hundred (300) feet of any part of the land included in the proposed change. When the project is to include a larger area and number of property owners and the applicant is the municipality or other governmental agency representing a large number of properties, the necessity of including names and addresses for the owners of land within three hundred (300) feet of the project area is not required although there must be a listing of all properties directly included by the project. Notice of hearing will only be required to be sent to the community, DNR and other agencies of government as set forth elsewhere in this ordinance as well as the class 2 type notice to be published in the paper.
- (C) Additional information as may be required by the county zoning agency, the county

health department or the town plan commission.

- (D) A fee, as may be established and periodically modified under section 20.01(4) shall accompany each application, except those submitted by a governmental body or agency. Such fee shall be paid by cash, check or money order to the Waukesha County Park and Planning Commission to defray the cost of official notification and posting of the public hearing. Costs incurred by the county zoning agency in obtaining legal, planning, engineering and other technical and professional advice in connection with the review of conditional use applications and preparation of conditions to be imposed on such uses shall be charged to the applicant, and if required by the county zoning agency, a fee covering such costs shall accompany the application.
- (E) Where necessary, to comply with certain regulations established by the Wisconsin Statutes and the federal government, applications will be required to be submitted to the state department of natural resources and the U. S. Army Corps of Engineers.

      (3) **Public Hearing:** Upon receipt of the application, the foregoing data and fees, the Zoning Administrator shall establish a date for a joint public hearing by the Town Plan Commission and the County Zoning Agency, or its designee, and shall publish notice of said hearing once each week for two (2) consecutive weeks in a newspaper of general circulation in the area of the proposed conditional use. Notice of the public hearing shall be given by certified mail to the owners of all lands within three hundred (300) feet of any part of the land included in such conditional use at least seven (7) days before such public hearing. An exception to this requirement for notice to surrounding property owners is that for projects which are applied for and the responsibility of the municipality or other governmental agency as mentioned in Section 3.07(2), notice is not required to be mailed to each affected property owner or those who own property within three hundred (300) feet of the project area. All other requirements for notice shall be provided as specified herein.

A copy of the notice of public hearing along with pertinent information relative to the specific nature of the matter (copy of application and map) shall be transmitted without delay to the Town Clerk by certified mail not less than ten (10) days prior to the date of the hearing. Testimony of all interested parties will be recorded at the public hearing and the Town Plan Commission shall take action within thirty (30) days, to either recommend approval or disapproval of the application along with any recommended conditions of approval or reasons for recommending denial. If additional time is necessary beyond the thirty (30) days referred to above, unless time is extended, such time may be extended with the consent of the petitioner. The action of the Town Plan Commission, and any conditions made applicable thereto, shall then be sent in writing to the County Zoning Agency. In the case of conditional use applications for a cemetery or mausoleum, the recommendation of the Town Plan Commission must first be submitted to the Town Board for official action of that body before transmittal to the County Zoning Agency.

(4) **Final review and approval:** The county zoning agency shall review the proposal as submitted along with requirements as may be established by the state department of natural resources and any applicable federal requirements. Any conditions as may be deemed necessary by

the federal government, the state, the town plan commission or the county zoning agency shall be made an integral part of the permit. These conditions shall be complied with by the applicant and any deviation or alteration of the conditions set forth in the permit shall constitute a violation of the terms of the conditional use permit. Such violation shall constitute a violation of this ordinance and will be subject to prosecution and penalties under the terms of this ordinance. Notification of county zoning agency action on conditional uses shall be sent to the department of natural resources, within ten (10) days of the approval by the county zoning agency.

**(5) Application for change of conditional use permits:** If any holder of a conditional use permit wishes to extend or alter the terms of said permit, he must apply for such extension or alteration through the procedure of application for conditional use permits as detailed herein.

**(6) Expiration or modification of conditional use status:** Conditional use status will terminate when, after public hearing, and a class 2 notice is published and notice provided the town and the owner of the subject property, the plan commission and county zoning agency determine any of the following

- (A) The conditional use has not continued in conformity with the conditions of the permit.
- (B) A change in the character of the surrounding area or if the conditional use itself causes it to be no longer compatible with surrounding uses.
- (C) The conditional use has been discontinued for a period of twelve (12) consecutive or eighteen (18) cumulative months during a three-year period. A business of a seasonal nature shall not be deemed discontinued during periods in which it is normally inactive (i.e., summer camps, ski hills, quarries, marinas, etc.)

Upon a determination or finding by the town and/or county being made that the use must be terminated or a change in the use or conditions of use upon which the use or operation exists, is necessary, the owner of the premises shall be required to bring all lands and structures into conformity with the permitted use regulation of the zoning district in which the property is located within sixty (60) days from such a determination, unless such time is extended by mutual agreement of the town and/or county. When changes in use or conditions of use are found to be more appropriate by the town and/or county, any changes or required improvements or changes to the use or operation as set forth by the town and/or county, shall be made within sixty (60) days unless such time is specifically extended by mutual agreement of the town and/or county.

**(7) Conditional uses permitted:** Subject to the foregoing, in addition to such uses enumerated in the district regulations, the following may be permitted as conditional uses in the districts specified, provided further that a public hearing shall be held and the location, building and site plans and plan of operation shall be submitted to and approved by the town plan commission and the county zoning agency:

- (A) **Airports, Landing Fields and Take Off Strips:** In all Agricultural, AD- 10, RRD-5 and non-wetland C-1 Conservancy districts, except that in the A-P Agricultural Land Preservation District, the A-T Agricultural Land Preservation Transition District and the A-E Exclusive Agricultural Conservancy district, the aviation use must be agriculturally or municipally related, subject to the approval of:
- A. Building and site plans and a plan of operation for the conduct of the use.
  - B. Review and approval by the Federal Aviation Administration and/or the State of Wisconsin Bureau of Aeronautics or a letter waiving their approval or indicating such approval is unnecessary.
- (B) **Automobile, Gasoline, and Service Station and Convenience Stores associated with gasoline sales:** In B-2, and B-3 Business Districts and any Industrial District, subject to the following:
1. No gasoline pumps and accessory equipment shall be closer than fifteen (15) feet to the base setback line and fifty (50) feet offset to the side and rear yards. Underground or above ground storage tanks shall conform with state standards.
  2. No lighting installation shall be permitted which creates a hazard to traffic or a nuisance to surrounding property and all lights shall be shielded, baffled or shaded to avoid such hazard or nuisance.
- (C) **Animal Hospitals, Veterinarian Clinics, Commercial Kennels:** In any district except C-1, A-E and E-C districts. However, animal hospitals and veterinarian clinics shall be permitted uses by right in the A-B Agricultural Business districts and business and industrial districts as long as such facilities do not include the operation of a commercial kennel. The following requirements shall be met:
1. The location, building and site plans, and a plan of operation shall be submitted to and approved by the Plan Commission and the County Zoning Agency.
  2. Animal hospitals and clinics not involved in the operation of a commercial kennel may be permitted on lots of not less than one (1) acre and shall be in conformance with building location, height regulations and area regulations of the district in which such facilities are located. A commercial kennel operation shall not be permitted on parcels of less than three (3) acres and three hundred (300) feet of minimum average width.
  3. No building other than one used only for residence purposes shall be closer than fifty (50) feet to the lot line of an adjoining lot in an Agricultural or

Residential Zoning District. Where the buildings are to be used to board or house dogs in a commercial kennel, including outdoor kennel runs, such structures and fenced runs shall not be closer than one hundred (100) feet to an adjoining lot line.

(D) **Cemeteries and Mausoleums for the Burial of Human Remains Only**: In any district except in C-1, A-E and E-C district subject to the approval of the Town Board following recommendations of the Plan Commission.

(E) **Churches, Synagogues and Other Buildings for Religious Assembly**: In any district, except in C-1, A-E and E-C districts subject to the following requirements:

1. A floor area ratio of at least 50% be observed.
2. Off-street parking be provided for one (1) automobile for each four (4) seats provided in the main assembly of the building.
3. Such use shall conform to the setback, height, and double the offset requirements of the district in which it is located.
4. The height limitation may be extended to a maximum of fifty (50) feet provided the minimum required setbacks and offsets shall be increased two (2) feet for every additional foot of height in excess of the permitted maximum in that district. The aforesaid height regulation shall not apply to the spire or belfry of a church except where airport safety zone regulations specifically limit the maximum height.

(F) [Repealed Nov. 5, 1984.]

(G) **Commercial fish or bait ponds or hatcheries**: In any district subject to the following:

1. No such use shall be permitted on a lot less than five (5) acres in area.
2. No building other than one, used only for residence purposes shall be closer than fifty (50) feet to the lot line of an adjoining lot in a district permitting residential use.

(H) [deleted 4-15-95]

(I) **Earth Altering Activities**: Grading, dredging, placement of clean fill, topsoil removal and channel improvement in excess of those limits set forth in Section 3.04(5) of this Ordinance, may be permitted as a conditional use in any district except the Conservancy/Wetland and Environmental Corridor Districts unless rezoned to allow such activity.

Highway construction which may be exempted by Wisconsin Statutes, home construction and the attendant limited grading and fill necessary to achieve positive drainage away from

the foundation and dredging as may be allowed in Section 3.04(5) of this Ordinance and minor grading as defined in the Ordinance, shall be excluded from regulation under this provision but may be regulated elsewhere under this Ordinance.

The above earth altering activities shall be subject to the following:

1. Detailed plans, at a scale of not less than 1" = 100', of the project including areas to be graded, filled or otherwise altered along with seeding and/or vegetation plans and planting schedule and erosion and sedimentation practices to be employed shall be submitted for review and approval.
2. No such use shall create flooding, concentrated runoff, inadequate drainage, unfavorable topography, excessive erosion and sedimentation or restrict navigation in navigable waters.
3. Such use shall comply with any ordinances or regulations established by a town and other county regulation as well as Chapter 30, 87, and 144 of the Wisconsin Statutes and any federal regulations.
4. Such use conforms to Sections 3.04(4), (5) and (9) of this Ordinance.
5. If required to be rezoned, the procedure established in Section 18 of this Ordinance shall be complied with and the amendment to any other appropriate zoning district shall be approved.

**(J) Testing Laboratories (Experimental or Analytical):** Agricultural, medical, biological, food processing and industrial design and manufacturing uses are permitted uses in the Industrial District subject to the provisions of the Industrial District and conditional uses in the A-B Agricultural Business, and A-1 Agricultural Districts, subject to the following standards:

1. The minimum lot size shall be three (3) acres.
2. The minimum offset for a building housing such uses shall be fifty (50) feet where the zoning upon the adjoining lot permits residential use.
3. Offstreet dedicated parking at a rate of one (1) space for each three hundred (300) square feet of floor area.
4. Approval of building plans, site plan and plan of operation.
5. Approvals of any other applicable state or federal agencies.

**(K) Legal non-conforming uses:** In any district as provided by section 3.15.



**(L) Marinas and boat liveries:** In any residential or business district subject to the following:

1. Such use shall be located at least five hundred (500) feet from the nearest public bathing beach or park.
2. Such use is designed and constructed so as to not interfere with adjacent riparian owners' uses of the water for swimming, fishing, or boating; nor interfere or obstruct the public's free navigation.
3. The minimum lot area shall be one (1) acre with a minimum width of lot not less than one hundred fifty (150) feet.
4. Sewerage disposal field shall be located not closer than one hundred (100) feet from the normal high water mark.
5. Fuel pumps shall be located two (2) feet above the normal high water mark elevation. Fuel storage tanks shall be located not closer than fifty (50) feet from the normal high water mark, shall be located above ground and shall be adequately screened and fireproofed. The offset requirements for fuel pumps shall be at least twenty (20) feet from the side lot line and storage tanks shall be located no closer than fifty (50) feet from any side lot line. All other locational requirements shall conform to the requirements of the district in which the use is located.
6. No lighting installation shall be permitted which creates a hazard to traffic or nuisance to surrounding properties.
7. No arcade as defined herein shall be permitted unless specifically authorized by the conditional use permit.
8. No pier may be permitted to extend beyond the pierhead line if established. The total length of all piers, and T's or L's extending from the pier may not exceed the total length of the lake frontage of the property and in no case greater than one hundred fifty (150) feet from shore.
9. Any other condition of operation such as long term boat storage, launching, or other associated commercial activity on the site may be considered for inclusion in the terms of the permit in order to make the facility compatible with the neighborhood and the lake and to meet the spirit and intent of the Ordinance.

**(M) Mobile home parks and camps:** In any district other than the agricultural districts, conservancy, exclusive agricultural suburban estate or residential district subject to the following:

1. The provisions of all other trailer camp or mobile home ordinances shall be met.

2. No such use shall be allowed unless municipal sewerage facilities are used or unless the minimum lot size per family is one-half acre having a minimum width of not less than one hundred twenty (120) feet, offsets at twenty (20) feet and a setback of fifty (50) feet.

(N) **Motels and Hotels:** In the B-1 Restricted Business District and B-2 Local Business District only, subject to the following:

1. No such use shall be permitted on a lot less than three (3) acres in area.
2. Off-street parking shall be required in accordance with section 3.11(1)(J) of this Ordinance.
3. No building shall be closer than fifty (50) feet to the lot line of an adjoining lot in a district permitting residential use.
4. All provisions of the motel ordinance of the town shall be complied with.
5. All provisions of the County Community Health Code shall be met.

(O) **Multiple Family Units:** In the R-3 Residential District, B-1 Restricted Business District or in a Planned Unit Development which may be allowed pursuant to Section 3.07(7)(Q) of this Ordinance and duplexes (2-family residential) AD-10 Agricultural Density 10 District, RRD-5 Rural Residential Density 5 District, subject to the following:

- 1: The minimum lot area shall be determined by the number of units to be constructed. The number of units shall be based on a density of one (1) unit for each fifteen thousand (15,000) square feet of land area, exclusive of wetlands or 100 Year Floodplain or lands zoned C-1. Where the use will be served by municipal sewerage facilities, the density requirements can be reduced to a minimum of ten thousand (10,000) square feet per unit. The density may be further increased if the requirements of Section 3.05(4) are met. The width of the lot shall be increased as the size of the lot increases in order to avoid excessively long and narrow lots and shall, however, be no less than one hundred and eighty (180) feet in width. The amount of open space (green space) on the property, exclusive of parking areas, driveways, roads and other paved or impervious areas, shall be five thousand (5,000) square feet per unit.
- 2: The manner in which the units are to be serviced with sewerage disposal is subject to approval by the State Department of Industry, Labor, and Human Relations and the County Department of Environmental Resources prior to any approval by the Town and the County.
3. The minimum floor area per unit shall be nine hundred (900) square feet for one (1) bedroom units, one thousand (1,000) square feet for two (2) bedroom units, and one thousand one hundred (1,100) square feet for three-bedroom units.

4. Architectural review of the project may be required by the town plan commission.
5. There shall be two (2) off street parking spaces required for each dwelling unit. The location and arrangement of these parking stalls shall be subject to the approval of the town plan commission and the county zoning agency.
6. The offset, setback and landscaping requirements are subject to modification by the plan commission and the county zoning agency; however, the offset requirements shall not be reduced to less than twenty (20) feet from any lot line of an adjoining lot in a residential district. The setbacks shall be a minimum of fifty (50) feet. The maximum height shall not exceed thirty-five (35) feet. Additional height may be permitted if the offset and setback requirements are increased by one (1) foot for each additional one (1) foot in height beyond thirtyfive (35) feet.

**(P) Outdoor theater:** In local and general business districts subject to the following:

1. No portion of the theater area shall be closer than two hundred (200) feet to the base setback line or closer than two hundred (200) feet to the lot line in a district permitting residential use.
2. A planting screen at least forty (40) feet in width and at least six (6) feet high shall be provided along any lot line abutting a district permitting residential use.
3. Additional highway width sufficient to provide for the safe control of traffic at the theater entrance shall be dedicated and the necessary highway improvements constructed to provide for a divided roadway, with adequate reservoir area in the center strip to shelter cars entering the theater.

**(Q) Planned Unit Development:** Due to increased urbanization and the associated greater demands for open space and the need to create a more desired and creative living environment than would result through the strict application of the standard zoning requirements, it is herein provided that there by flexibility in the regulations governing the development of land. This provision is intended to encourage planned unit development in directions which will recognize both the changes in design and technology in the building industry and the new demands in the housing market. It is intended that these provisions create imaginative and interesting communities with substantial open area owned in common or dedicated to the public and for the enjoyment of the residents, and will encourage a more efficient and desirable use of the land and open space areas thereby resulting in more variety of the physical development of the County.

An overall development plan showing how the above objectives are to be achieved must be submitted to the Plan Commission and the County Zoning Agency for review and approval. This use is permitted in any district except A-E Exclusive Agricultural, A-B Agricultural Business, A-P Agricultural Land Preservation, AD-10 Agricultural Density, and the RRD-5 Rural Residential Density, except that no portion of any building lots or structures shall be allowed in the C-1 Conservancy district, subject to the following:

1. Lot size, height, offset, setback, open space, floor area ratio, building size and building location requirements may be modified according to the following conditions:
  - a. That all sanitary provisions are approved by the county health department.
  - b. That the proposed development is in conformity with the Town comprehensive plan, is not contrary to the general welfare or economic balance of the community, and that the benefits and amenities of the resultant development justifies the variation from the normal requirements of the district.
  - c. That all other requirements of planned unit developments are met as set forth in Section 3.07(7) (Q).
2. Residential P.U.D.:
  - (a). The following table shall be utilized to compute the maximum dwelling unit density requirements of the P.U.D.:

A-1	One hundred and twenty thousand (120,000) square feet per dwelling unit.
A-2	One hundred and twenty thousand (120,000) square feet per dwelling unit.
A-3	Eighty thousand (80,000) square feet per dwelling unit.
A-4	Fifty-eight thousand (58,000) square feet per dwelling unit.
A-5	Two hundred thousand (200,000) square feet per dwelling unit.
E-C	Two hundred thousand (200,000) square feet per dwelling unit.
R-1	Thirty-nine thousand (39,000) square feet per dwelling unit.
R-2	Twenty-five thousand (25,000) square feet per dwelling unit.
R-3	Fifteen thousand (15,000) square feet per dwelling unit.

In the Business districts, the density shall be the same as in the R-3 district. An additional density bonus of 15% is available in the E-C Environmental Corridor district where the development of the site would preserve the Environmental Corridor in its natural state and no development occurs within such corridor. The Environmental Corridor, to the greatest extent possible, be protected in common open space areas.

- (b). Lands currently zoned C-1 or A-E may not be used in formulating the density of the project. When lands border a lake or other public body of water, the pyramiding as defined herein may be allowed if the minimum lake frontage and average width of the parcel fronting on the lake at the high water mark is one hundred (100) feet for the first dwelling unit and an additional twenty-five (25) feet for each dwelling unit thereafter. No more dwelling units may have access to the lake than what would result from the application of this pyramiding provision irrespective of the overall size of the development project.
  - (c) Adequate guarantee shall be provided for permanent retention of open area resulting from these regulations, either by private reservation for use of the residents within the development or by public dedication. Buildings or uses for noncommercial, recreational or accessory facilities may be permitted in such open space area with the approval of the plan commission and the county zoning agency.
  - (d) Perpetual care and maintenance of such open space areas shall be provided for and an operational plan shall be submitted for approval to the plan commission and the county zoning agency.
  - (e) Ownership and tax liability of the open space areas shall be established in a manner acceptable to the town and made a part of the conditions of approval.
3. Commercial P.U.D.: The use of a Commercial P.U.D. may be authorized only where the underlying zoning is mapped in one or more of the business districts on the parcel or a portion thereof. If only a portion is zoned for business, the commercial P.U.D. may only be used for the same percentage of the site that would result from the normal application of the Business district requirements. The location of the proposed business uses can however, be flexed on the site so long as no more area is devoted to such use than is permitted in the underlying district. The attendant parking areas and service facilities for the commercial areas shall be included in the areas allocated to such non-residential uses.
- (a) The proposed P.U.D. shall be served by adequate off-street parking, loading and service facilities.
  - (b) The P.U.D. shall not create an adverse effect upon the general traffic pattern or adjoining property values.
  - (c) Architecture, landscaping, lighting and general site development shall be compatible with the surrounding neighborhood.
  - (d) The aforementioned requirements shall be certified by the Town and County as having been fully met.

4. Mixed P.U.D.: A mixed P.U.D. shall consider allowing a mixture of business, residential or other uses as the underlying zoning would allow. The percentage of area in the project shall be the same as would result from the application or the strict adherence of the normal district regulations. The location of the uses can however be flexed on the site so long as no more area is devoted to the various uses than would be permitted in the underlying zoning district. The attendant parking and service facilities for the non-residential part of the project shall be included in the area allocated to such non-residential uses.
  - (a) The proposed mixture of commercial, industrial, residential, and other uses shall produce a unified composite which is compatible both within itself and with the surrounding neighborhood.
  - (b) The mixed uses shall conform to the general requirements applicable to each of them as here-in-before set forth.
  - (c) The maximum allowable dwelling unit density shall be computed using only the residential area portion of the total P.U.D. area. If residential use and non-residential use occur in the same proposed building, that percentage of the commercial use of the building shall be deducted from said building lot and only the remaining area shall be used in the density computation for the remaining residential units.
5. After all conditions of a planned unit development project are certified by the town and county as being completed, the conditional use status of such completed development shall be changed to a permitted use in the district in which it is located.
6. Example - Computing Maximum Dwelling Unit Density in a Planned Unit Development: A developer wishes to divide one hundred (100) acres of land into a planned unit development. Ten (10) of these acres are zoned C-1 Conservancy. The rest is zoned R-1 residential. The preliminary plan shows an additional ten (10) acres devoted to commercial uses. The following computations demonstrate the method of determining how many residential units may be allowed in the project.
  - a) Gross acreage. 100 acres
  - b) Less ten (10) acres zoned C-1 - 10 acres  
90 acres
  - c) Less ten (10) acres zoned for - 10 acres  
B-2 Business use. 80 acres
  - d) Total residential acreage in sq. ft.  
(80 acres x 43,560) 3,484,800 square feet
  - e) Divide by square feet per

dwelling unit requirement for  
R-1 Residential districts  
(3,484,800 divided by 39,000) = 89 units

- f) The 10 acres zoned for commercial use can not be included in the PUD as it is not zoned for business use and must be rezoned to be considered.

**(R) Private Clubs and Resorts:** Without limitation because of enumeration, this category includes resorts and private clubs such as outdoor/indoor recreational facilities as defined herein driving ranges, tanning booths, campgrounds, golf courses, beaches, yacht clubs, boarding stables, etc. are permitted in any district except that buildings and structures are not permitted within C-1 or A-E zoned areas, subject to the following:

1. No such use shall be permitted on a lot less than three (3) acres in area except in a restricted business or less restrictive district.
2. No building, other than one used only for residence purposes shall be closer than fifty (50) feet to the lot line of an adjoining lot in a district permitting residential use.
3. Off-street parking shall be provided as required by the Plan Commission adequate to meet the particular needs of the proposed use.
4. No such permitted use shall include the operation of a commercial facility such as a bar, restaurant or arcade except as may be specifically authorized in the grant of permit.

**(S) Public and semi-public buildings and use:** In any district except C-1 conservancy subject to the following:

1. Such use shall conform to the setback, height, and double the offset requirements of the district in which it is located.
2. The height limitation may be extended to a maximum of fifty (50) feet provided the minimum required setbacks and offsets shall be increased two (2) feet for every additional foot of height in excess of the permitted maximum of that district.

**(T) Quarrying as defined in this Ordinance:** In any district except C-1 Conservancy/Wetland, A-E Exclusive Agricultural, E-C Environmental Corridor, Rural Home, Suburban Estate, Country Estate, Residence or Restricted Business Districts subject to the following:

1. Procedure for application:
  - a. Permit: No quarrying operation shall take place in any district until a conditional use permit has been secured from the Town Board and the County Zoning Agency. Except in a quarrying or general industrial district

such permit shall be for an initial period as is deemed appropriate to the specific situation but not exceed five (5) years, and may be renewed thereafter for periods not to exceed three (3) years provided application thereof shall be made at least sixty (60) and no more than one hundred twenty (120) days before expiration of the original permit. Application after such date shall be treated as an original application.

b. Application: Application for a conditional use permit shall be made on forms supplied by the Waukesha County Park and Planning Commission and shall be accompanied by a fee as may be established and periodically modified under section 20.01(4) of this Ordinance. Such fee shall be paid by cash, check or money order to the Waukesha County Park and Planning Commission, and shall be accompanied by:

- (1) A full and adequate description of all phases of the contemplated operation and the specific mention of type of machinery and equipment which will be or might be necessary to carry on the operation. Where the operation is to include the washing of sand and gravel, the estimated daily quantity of water required, its source and its disposition shall be made part of the description.
- (2) A legal description of the proposed site with a map showing its location with indications of private access roads, existing or proposed, and of public highways adjacent to the site which will be affected by the operation.
- (3) A topographic map of the area at a minimum contour interval of five (5) feet extending beyond the site to the nearest public street or highway or to a minimum distance of three hundred (300) feet on all sides.
- (4) A restoration plan as required by section 3.07(7) (T) 3(e).

2. Procedure for action and application:

- a. Referral to Plan Commission: The application and all data and information pertaining thereto shall be referred to the Plan Commission for public hearing and report back to the Town Board within thirty (30) days after the public hearing.
- b. Public hearing: Within thirty (30) days after an application has been filed, a public hearing shall be held at which all interested parties may be heard. In addition to the normal posting and publishing, notices also shall be sent through the mail or otherwise placed in the hands of all land owners within a half mile radius of the approximate center of the proposed quarrying operation. These notices shall be mailed or delivered at least ten (10) days prior to the date of hearing. Substantial compliance with the notice requirements of this section shall be deemed sufficient.



No hearing shall be required precedent to issuing a permit in a quarrying district.

- c. Action by the Town Board: The Town Board shall, within ten (10) days after receipt of the recommendation of the Plan Commission, take action to approve or disapprove the application for the proposed quarrying operation and shall be guided by consideration of the public health, safety and welfare and shall give particular consideration to the following factors in making their decision:
  - (1) The effect of the proposed operation on existing roads and traffic movement in terms of adequacy, safety and efficiency.
  - (2) The effect of the proposed operation on drainage and water supply.
  - (3) The possibility of soil erosion as a result of the proposed operation.
  - (4) The degree and effect of dust and noise as a result of the proposed operation.
  - (5) The practical possibility of restoration of the site.
  - (6) The effect of the proposed operation on the natural beauty, character, tax base, land value, and land uses in the area.
  - (7) The most suitable land use for the area with particular consideration for future residential value.
- d. Approval by Zoning Agency: The determination of the Town Board shall be immediately transmitted to the County Zoning Agency which shall within thirty (30) days approve or disapprove of the determination.
- e. Additional conditions: Any conditions accessory to the granting of a permit shall be in writing and copies made a part of the records of the Town and of the County Zoning Agency.
- f. Renewals: The procedure as designated in a, b, c, d, and e above shall apply to applications of renewal of a permit. Determination in regard to renewal shall be based particularly on an evaluation of the effect of the continuance of the use with relation to changing conditions in the area. Where renewal is not granted, the reasons for refusal shall be presented to the applicant in writing and made a part of the records of the Town and of the County Zoning Agency.

### 3. Requirements:

#### a. General requirements:

- (1) No part of the quarrying operations shall be permitted closer than one thousand (1,000) feet, nor shall any accessory access road, parking area or

office building be permitted closer than five hundred (500) feet to a district zoned rural home or residential at the time of the grant of permit except with the written consent of the owners of all rural home or residentially zoned properties within one thousand (1,000) feet, or except in a quarrying or general industrial district, but in no case shall such operation be permitted closer than two hundred (200) feet to a residential district.

- (2) No quarrying operation shall be permitted except in a quarrying, limited industrial or general industrial district if thirty (30) or more families reside within a band one-half mile wide around the perimeter of the proposed operation.

b. Setback requirements:

- (1) No part of the quarrying operation other than access roads shall be located closer than two hundred (200) feet nor shall any accessory parking area, stock pile, or office building be located closer than one hundred (100) feet to the base setback line along any street or highway.

c. Offset requirements:

- (1) No part of the quarrying operation shall be permitted closer than two hundred (200) feet, nor shall any accessory access road, parking area, or office building be located closer than fifty (50) to any property line except with the written consent of the owner of adjoining property, or except where said line is abutting a quarrying, limited industrial or general industrial district, or abutting an existing quarrying operation, but in no case shall such operation be closer than twenty (20) feet to any property line except by agreement between abutting quarrying operations, or be in conflict with the provisions of Section 3.04(5) relating to preservation of topography.

(d) Operational Requirements:

- (1) Fencing or other suitable barrier shall be erected and maintained around the site or around portions of the site where in the determination of the Town Board such fencing or barrier is necessary for the protection of the public, and shall be of a type approved by the Town Board.
- (2) All machinery and equipment used in the quarrying operation shall be constructed, maintained and operated in such a manner as to minimize dust, noise and vibration. Access and haulage roads on the site shall be maintained in a dust-free condition by surfacing or treatment as directed by the Town Engineer.
- (3) The crushing, washing, refining, or other processing other than the initial

removal of material, may be permitted as an accessory use only as specifically authorized under the terms of the grant of permit or as otherwise provided in a quarrying or industrial district.

- (4) In stone quarries the production or manufacturing of veneer stone, sills, lintels, cut flagstone, hearthstones, paving stone and similar architectural or structural stone and the storing or stock-piling of such products on the site shall be considered a permissible part of the operation, provided such production does not require the use of crushing or other heavy machinery except as may be otherwise specifically authorized under the terms of the grant of permit or as otherwise provided in a quarrying or industrial district.
- (5) The manufacture of concrete building blocks or other similar blocks, the production or manufacture of lime products, the production of ready-mixed concrete and any similar production or manufacturing processes which might be related to the quarrying operation shall not be permitted except as otherwise provided in a quarrying or industrial district.
- (6) The washing of sand and gravel shall be prohibited in any operation where the source of water is of doubtful capacity or where the quantity of water will, in the opinion of the Town Engineer, seriously affect the supply of other uses in the area.
- (7) The planting of trees and shrubs and other appropriate landscaping shall be provided where deemed necessary by the Plan Commission to screen the operation so far as practical from normal view, to enhance the general appearance from the public right-of-way, and generally to minimize the damaging effect of the operation on the beauty and character of the surrounding countryside. Such planting shall be started as soon as practicable, but no later than one (1) year after quarrying operations have begun and shall be done according to the recommendations of the Waukesha County Park and Planning Commission.
- (8) Except in a quarrying or General Industrial District, quarrying operations shall not begin before the hour of 7:00 a.m. and shall not continue after the hour of 6:00 p.m. and no operation shall take place on Sundays or legal holidays. During periods of national or unusual emergency, times and hours of operation may be altered at the discretion of the Town Board and through the issuance of a special permit which shall be renewable at thirty (30) day intervals.

(e) Restorative requirements:

- (1) In order to insure that the area of quarrying operation shall be restored to a condition of practical usefulness and reasonable physical attractiveness, the owner or operator shall, prior to the issuance of a permit, submit to the Town

Board a plan for such restoration in the form of the following:

- a. An agreement with the town whereby the applicant contracts to restore the premises to a condition and with a time satisfactory to the town.
  - b. A physical restoration plan showing the proposed contours after restoration, plantings and other special features of restoration, and the method by which such restoration is to be accomplished.
  - c. A bond, written by a licensed surety company, a certified check, or other financial guarantee satisfactory to the town, in an amount sufficient in the opinion of the town engineer to secure the performance of the restoration agreement.
  - d. Such agreement and financial guarantee shall be in a form approved by the town attorney.
- (2) In the event of the applicant's failure to fulfill this agreement such bond, check or other financial guarantee shall be deemed forfeit for the purpose of enabling the town to perform the restoration.
- (3) Restoration shall proceed as soon as practicable and at the order and direction of the town engineer. However, the owner or operator may, at his option, submit a plan for progressive restoration as the quarrying operation is being carried on. The required bond in such case may cover progressive stages of the restoration for periods of not less than two (2) years.
- (4) At any stage during the restoration the plan may be modified by mutual agreement between the Town and the owner or operator.
- (5) Where there is any backfilling, the material used or the method of fill shall not be such as to create a health hazard nor which would be objectionable because of odor, combustibility, or unsightliness. In any case the finished grade of the restored area except for rock faces, outcroppings, water bodies, or areas of proposed building or paving construction, shall be of sufficient depth of earth to support plant growth.
- (6) Within one (1) year after the cessation of the operation, all temporary structures (excepting fences), equipment, stock piles, rubble heaps, or other debris shall be removed or backfilled into the excavation so as to leave the premises in a neat and orderly condition.
- (7) In any restoration procedure which takes place in sand or gravel pits or on other sites where the material is of a loose or friable nature, no slope shall be

left which is steeper than a ratio of three (3) horizontal to one (1) vertical. In no case shall any slope exceed the normal angle of slippage of the material involved.

(f) Exceptions:

- (1) The provisions of this section, 3.07(7)(T), shall not apply to the removal of sod.
- (2) When the operation is limited to the removal of topsoil, the plan commission may, consistent with the intent of these regulations, modify any or all of the provisions of this section 3.07(7)(T), provided, however, that in no case shall such operation be permitted closer than ten (10) feet from any property line, or to a depth in excess of eighteen (18) inches or so as to adversely affect the drainage of the area.
- (3) The provisions of this section 3.07(7) (T), shall not apply to an operation which is incident to legitimate use of the premises; provided, however, where such operation involved the commercial disposal of the material removed, the approval of the plan commission shall be required and such operation shall be limited to a maximum period of six (6) months.
- (4) In a quarrying or general industrial district the plan commission may, consistent with the intent of these regulations, modify the provisions relative to permitted hours of operation; and where the character of terrain, of surrounding development, or other special conditions would justify such modification may permit a reduction in the required setback or offset; provided, however that in no case shall the setback be less than one hundred (100) feet, or the offset be less than one hundred (100) feet for quarrying operations or twenty (20) feet for any accessory access road, parking area, or office building except as may be otherwise provided by section 3.07(7)(T)3(c).

4. Application to existing operation:

- (a) Permit: Within sixty (60) days after the adoption of this ordinance all existing quarrying operations shall be required to register with the town clerk submitting pertinent data relative to the present operation, including the boundaries of the actual operation and of the ownership. A quarrying permit shall be granted to such existing operation subject to compliance with the operational requirements, section 3.07(7)(T)3(d), of this ordinance where they can be reasonably applied under existing circumstances.
- (b) Plan for restoration: There shall be required within one (1) year after

adoption of this ordinance, the submission of a plan for restoration of the site of any existing quarrying operation as provided by section 3.07(7)(T)3(e). The plan for restoration in such case shall not, however, impose requirements which are economically or engineeringly unreasonable with respect to conditions resulting from operations prior to enactment of this ordinance.

- (c) Renewal permit: Within three (3) years after the date of this Ordinance any such existing operation shall be required to make application for a renewal permit the same as for reapplication in the case of a new operation under this ordinance except in a quarrying or general industrial district.

(U) **Restaurants, Supper Clubs, Lake Resorts, Taverns and Similar Uses**: In B-2 and B-3 Business districts such uses shall be considered permitted uses by right. In all other districts except the A-B, A-E, A-P, A-5, C-1, P-1 and E-C districts, the above uses shall be considered conditional uses, subject to the following:

1. The minimum lot area shall be at least three (3) acres and at least two hundred (200) feet in minimum in average width.
2. Off-street parking shall be provided within two hundred (200) feet of the building in which such use is occurring, but offset twenty (20) feet from any lot line of an adjacent property zoned agricultural and any residential zoning district. The amount of space required shall be in accordance with the requirements contained in Section 3.11(1) (C).
3. A planting screen of at least six (6) feet in initial height shall be provided between any abutting Residential District and the proposed conditional use. Additional screening may be required by the Plan Commission or the County Zoning Agency.
4. The proposed building shall be offset at least fifty (50) feet from any adjoining residential district and one hundred (100) feet from the high water mark of any lake or navigable body of water.

(V) **Commercial Truck Parking**: Such uses are uses permitted by right in B-3, Industrial and Quarry districts. In all Residential, Agricultural, B-1 and B-2 Business districts except the E-C Environmental Corridor District subject to the following:

1. The parking and the storage of commercial vehicles (dump trucks, school buses, construction vehicles, semi-trailers and tractors) may be allowed as long as the vehicle is owned or leased and operated by the owner or occupant of the premises. No such use shall be allowed on any parcel except as may front directly upon and have access to an arterial or major collector street as defined in the Waukesha County Shoreland and Floodland Subdivision Control Ordinance.
2. No more than one (1) such vehicle shall be allowed to be parked or stored on the

occupant's property and no more than two (2) additional construction vehicles (backhoes, front end loaders, grading equipment, etc.) shall be allowed. Such vehicles shall be fully operative and in active use. Where considered appropriate, two (2) trailers may be allowed, but in no case may there be more than one (1) semi-tractor or "cab" unit.

3. No such vehicle shall be allowed to be parked or stored closer than fifty (50) feet to any adjacent lot line, and not closer than one hundred (100) feet from the base setback line. In the case of refrigerator trucks, the refrigeration unit may not be operated in the open if said truck is parked closer than five hundred (500) feet to the nearest neighboring residential property line.
  4. In determining whether or not the proposed conditional use permit should be issued, a determination of compatibility with adjacent land uses shall be made by the Town Plan Commission and County Zoning Agency in issuing this conditional use permit. If it is determined that it would in any way be incompatible and represent an adverse effect or nuisance to adjacent land uses, the conditional use permit shall not be issued.
  5. The conditional use permit shall be reviewed every two (2) years by the Town Plan Commission in order to determine conformance with the terms of the permit and if it is determined that the use is no longer compatible with adjacent land uses as they develop in the vicinity, the conditional use permit may be revoked in accordance with the revocation procedures contained in this Ordinance.
- (W) Other uses or situations not specifically provided for in this conditional use section and which may be determined to be acceptable under the provisions of section 3.04a and in the judgment of the plan commission and county zoning agency, meet the intent of a conditional use as set forth in [section] 3.07(1).

(X) **Fur Farms, Pig Farms, Creameries, Condenseries, Commercial or Custom Grain**

**Drying Operations:** In A-1, A-B, A-0, A-5 and A-6 districts. Commercial or custom grain drying, poultry and/or egg production are considered permitted uses by right in the A-B Agricultural Business district and conditional uses in A-1, A-B, A-0, A-5, and A-6 districts. The following minimum requirements shall be complied with in the granting of conditional uses under this Section:

1. The location, building and site plans, and plan of operation shall be subject to the review and approval of the town plan commission.
2. No building other than one used only for residential purposes shall be located closer than one hundred (100) feet to the lot line of an adjoining lot in a residential district. In all other cases a minimum offset of fifty (50) feet shall be maintained.
3. Although the ordinance does not prescribe exactly how a plan of operation is to be

put together, of particular interest to the plan commission will be the method by which animal waste will be handled in a safe and healthful manner. No such consideration or approval will be granted on a lot of less than five (5) acres in size.

(Y) **Antique shops, gift shops, arts and craft studios and similar uses:** Such uses are permitted uses by right in Business Districts and may be allowed as conditional uses in all other districts except A-P agricultural preservation, A-E exclusive agricultural and C-1 conservancy districts subject to the following:

1. The location, site, and building plans and plan of operation have been approved by the plan commission.
2. The plan commission and county zoning agency shall make a finding that such use is compatible with surrounding and nearby residential land uses which may be affected by the proposed use. (Ord. of 11-5-84, §§ III, IV; Ord. No. 141-44, §§ XXIX-XXXV, LXX, 7-22-86)

(Z) **Bed and Breakfast Facility:** The intent is to provide travelers/guests with temporary accommodations and breakfast, for a fee, on a daily or weekly room rental basis, as an accessory use in any existing structure designed for and occupied as a single family residence in any district permitting single family residences subject to the following:

1. The location, building and site plan and a plan of operation shall be submitted to and approved by the Plan Commission and the County Zoning Agency.
2. Minimal outward modification of the structure or grounds may be made only if such changes are compatible with the character of the area or neighborhood and the intent of the zoning district in which it is located. For building with significant architectural or historical value, the architectural integrity and arrangement of existing interior spaces must be maintained and the number of guest rooms shall not be increased except as may be required to meet health, safety, and sanitation requirements.
3. Off-street parking shall be provided at the rate of one (1) parking space for each room rented and two (2) spaces for the owner/occupant. The front yard shall not be for off-street parking for temporary guests unless the parking area is screened from view with natural plant material, and found to be compatible with the neighborhood.
4. The number of rooms shall be limited to five (5) sleep-in rooms or less, excluding those used by the occupants of the facility, and no room may contain more than two (2) beds. There must be at least five hundred (500) square feet of gross interior floor area for each sleeping room. These facilities providing service to a greater number of guests are not considered "license exempt" under state law and must comply with state hotel/motel restaurant licensing procedures administered by the County or State Health Department. The issuance of such licenses shall not be considered as



conferring non-conforming commercial status to the use which would either allow alteration of the facility or otherwise compel rezoning of the property for commercial use beyond the scope of this Section.

5. One (1) on-premise sign may be allowed provided that such sign is compatible with the residential use of the site and its surrounding areas and is not more than fifteen (15) square feet in size with letter sizes not less than five (5) inches in height.
6. All necessary state and county permits, certifications, or requirements shall be obtained as a condition of approval of a bed and breakfast service.
7. Room rentals to families or individuals shall not exceed fourteen (14) consecutive days during any thirty day (30) period.
8. The bed and breakfast facility must be accessory to and contained within the single family dwelling occupied by the owner (e.g., not a manager) of said premises.
9. The only meal to be provided to travelers/guests shall be breakfast and it shall only be served to guests taking lodging in the facility.
10. The Waukesha County Department of Parks and Land Use, Environmental Health Division shall examine both the water system and the sewage disposal system, and shall conduct a general health and safety inspection of the proposed facility. The Dept. of Parks and Land Use may impose any conditions required to ensure that all necessary health and safety standards have been met. The applicant shall not: initiate any construction activity and other improvements related to the bed and breakfast facility; or begin operation of the facility until a determination, in writing, by the Dept. of Parks and Land Use that the necessary inspections have been completed and any deficiencies have been corrected. The proprietor shall have a water quality evaluation conducted by a recognized water testing laboratory on an annual basis following the certification of adequacy by the Dept. of Parks and Land Use. The results of that test shall be submitted to the Dept. of Parks and Land Use with a copy to the Zoning Administrator. All requirements must be incorporated into the terms of the conditional use permit.

**(AA) In-Law Unit:** In any Residential, Agricultural, B-1 or B-2 zoning district subject the following:

1. The location, building plan, site plan and plan of operation shall be submitted to and approved by the Plan Commission and the County Zoning Agency.
2. The Waukesha County Dept. of Parks and Land Use, Environmental Health Division shall certify that the septic system will accommodate the proposed use and in accordance with I.L.H.R. 83, County and State Sanitary Codes.
3. Maximum living area of the in-law unit shall not exceed eight hundred (800) square

feet and shall contain no more than two (2) bedrooms. There shall be an additional parking space for the in-law unit. There shall be no more than one (1) in-law unit per single family lot.

4. Architecture of the residence shall be compatible with the adjacent residential neighborhood and shall appear to be a single family residence. All other appropriate zoning district requirements for the principal living unit shall be complied with. A common entrance to the residence and in-law unit should be designed into the structure so that a separate front entrance off of the common entrance is available and the structure does not appear to be a duplex.
5. The Plan Commission and the County Zoning Administrator shall determine if it is appropriate to have an interior door between the in-law unit and the principal residence.
6. A Deed Restriction shall be filed in the Waukesha County Register of Deeds Office and a copy of the recorded document presented to the Building Inspector prior to issuance of the Building Permit. This Deed Restriction shall state that the in-law unit is to be occupied by persons related by blood or marriage to the family occupying the principal unit and that the Conditional Use is not transferable without formal approval of the Plan Commission and the County Zoning Agency without necessity of a public hearing and that the unit will be used as intended.

**(BB) Business, Park and Shopping Center Uses:** In the B-P and B-4 zoning districts certain uses may be allowed as a conditional use, as those uses or situations are of such a special nature of are so dependent upon the actual circumstances that it is impractical to allow them as a permitted use by right. In evaluating the proposed use, the Town and County Plan Commissions shall base their action on whether or not the proposed use will violate the spirit or intent of the ordinance, be contrary to the public health, safety or general welfare, be hazardous, harmful, noxious, offensive or a nuisance by reason of noise, dust, smoke, odor, traffic congestion, incompatibility of uses, or other similar factors or for any other reason causes substantial adverse effect on the property values and general desirability of the neighborhood or the center. The following considerations shall be utilized in the determination of the appropriateness of the contemplated uses by the Town and County:

1. The Town and County Plan Commissions must review and approve all existing and proposed uses and the Plan of Operation.
2. The economic practicality of the proposed use.
3. The proposed use shall be served by adequate off-street parking, loading and service facilities.
4. The proposed use shall not create an adverse effect upon the general traffic patterns, circulation or adjoining property.

5. The architecture, landscape, lighting and general site development shall be compatible with the surrounding neighborhood and uses.
6. The use may be granted with any reasonable conditions deemed necessary by the Town and County Plan Commissions.
7. The proposed development shall have adequate drainage and stormwater retention facilities, sewage and water facilities. Restrictions may be placed on uses without public sewer.
8. The intended use complies with the locally adopted Land Use Plan.

### **3.08. Building location.**

(1) Setbacks:

- (A) Base setback lines, from which building setback shall be measured, are hereby established for all streets and highways in the county as follows, unless otherwise specified by action of the county zoning agency.
1. On all streets or highways for which the ultimate width has been established by the Highway Width Ordinance of Waukesha County, the base setback line shall be located at a distance from the centerline equal to one-half such established width as designated on the "Established Street and Highway Width Map of Waukesha County." (**Cross reference** - Highway widths, § 24-26.)
  2. On all other streets, which shall be designated as "local streets" the base setback line shall be at least thirty-three (33) feet from the centerline of such street or sixty (60) feet from the center point of a cul-de-sac unless specifically designated otherwise by action of the county zoning agency.
  3. When a lot abuts a frontage road, the base setback line shall be located at a distance from the centerline equal to one-half the right-of-way width of said frontage road.
  4. Such setback lines shall be parallel to and measured at right angles to the centerline of the street or highway.
  5. There shall be a required setback equal to the offset requirement of the district in which the property is located, from a private right-of-way providing ingress and egress to the subject land or other lands unless such private right-of-way is considered a mill tax road, in which case the normal road setback requirements contained in this Ordinance shall apply.

- (B) Vision setback lines at the intersections of public streets or highways and of a street or highway with a railroad, where the grade is not separated, are hereby established as follows:
1. Across each sector between the intersection of a street or highway with a railroad, a vision setback line shall be established by a straight line, connecting points on the base setback line and the railroad right-of-way line, which points are located one hundred twenty (120) feet from the intersection of the base setback line and the railroad right-of-way line.
  2. Across each sector between intersecting streets or highways, one (1) or more of which has an established width of one hundred (100) feet or more, a vision setback line shall be established by a straight line connecting two (2) points on the intersecting base setback lines, which points are located sixty (60) feet distant from the intersection of said base setback lines.
  3. Across each sector between any other intersecting streets a vision setback line shall be established by a straight line connecting two (2) points on the intersecting base setback lines, which points are located thirty (30) feet distant from the intersection of said base setback lines.
- (C) No principal or accessory building shall be hereafter erected, altered, horizontally added to, relocated or placed closer to the base setback line than the setback distance specified by the regulations for the district in which such building is located except as specified here-in- after:
1. If there is a building which is non-conforming with respect to road setback, with a similar use as the proposed building, located on an adjacent parcel on one side of the proposed building or within two hundred (200) feet of the proposed building, the average of the road setback of that building of similar usage and the required minimum road setback shall apply.
  2. If there are two (2) buildings which are non-conforming with respect to road setback, with similar uses as the proposed building, located on adjacent parcels on each side of said building or within two hundred (200) feet of the proposed building, the average of the road setbacks of those buildings of similar usage shall apply.
  3. In the case of a proposed addition to an existing building which has less than the required road setback, the road setback of such existing building may be used to determine the required road setback for the proposed addition, as set forth above.

- (D) No other structures of any kind, except necessary highway and traffic signs, open stairs extending six (6) feet or less from the enclosed portion of the structure, open stairs in combination with stoops and/or porches which are unenclosed and provide no more than twenty (20) square feet in area and extend no more than six (6) feet from the enclosed portion of the structure, public utility lines, rural mailboxes, monuments or entrance gates, and those signs permitted in a residence or agricultural district shall be hereafter erected, altered or placed within such base setback area. Monuments and entrance gates may be located not closer than ten (10) feet to the base setback line and shall not restrict safe access and visibility of the intersecting drive and the road and shall be subject to review and approval by the Plan Commission and the County Zoning Agency.
- (E) In the vision setback area no structure of any kind shall be permitted which exceeds a height of three (3) feet above the elevation of the center of the intersection, except for necessary highway and traffic signs, public utility lines, and open fences through which there is clear vision, nor shall any plant material be permitted which obscures safe vision of the approaches to the intersection.
- \_\_\_\_\_(F) Additions to and replacements of existing structures may be made within the established road right-of-way as set forth by Section 3.08(1)(A) of this Ordinance, subject to approval of the Town Board and the Waukesha County Board of Adjustment, provided the owner will file, with the Waukesha County Register of Deeds, an agreement in writing to the effect that the owner will remove all new construction, additions and replacements erected after the adoption of this Ordinance at his expense, when said right-of-way is necessary for the improvement of the highway.
- (G) In all cases where any of the highways for which setback lines are established by this Ordinance are located on municipal boundaries, such establishment shall apply only within the unincorporated area.
- (H) On corner lots of record, as of the date of adoption of this Ordinance, the effect of the setback regulations shall not reduce the buildable width of such corner lot to less than thirty (30) feet. Where such reduction would result in an area narrower than thirty (30) feet after applying the offset reduction, the Zoning Administrator shall have the authority to modify the setback or offset provision to the extent necessary to minimize the encroachment on both the offset and setback standard while maintaining the thirty (30) feet area required herein.
- (I) Every structure except piers, boat hoists and boathouses shall be setback seventy-five (75) feet from the ordinary high water mark of navigable waters, the one hundred-year flood or the conservancy/wetland district unless an existing pattern of development exists which is less than the seventy-five foot requirement in which case the average of the existing principal structure shore setback on either side of the principal structure may be used to compute the setback for the principal building

only. The method of computation shall be similar to the setback averaging feature for road setbacks contained in section 3.08(1)(C) as it would apply to the principal structure only. No building, except boathouse piers and hoists notwithstanding the application of the setback averaging feature, may be allowed closer than twenty-five (25) feet from the ordinary high water mark, the floodplain or the conservancy/wetland district unless specifically excepted by another provision of this ordinance.

- (1) Boathouses may be permitted not closer than five (5) feet from the ordinary high water mark and within the one hundredyear floodplain but outside of the floodway, as set forth by section 4.19(4) of this ordinance. Boat hoists any piers may be erected on the bed of navigable waters pursuant to section [chapter] 30 of the Wisconsin Statutes and Section 3.04(6)(C) of this ordinance.
  - (2) Patios, as defined herein are exempt from the setback provisions and may extend to the ordinary high water mark or the edge of the one-hundred-year floodplain line and the conservancy/wetland district.
  - (3) A deck or patio shall meet the seventy-five (75) foot setback requirement from the ordinary high water mark as defined herein. Where a pattern of development exists with a principal building closer than seventy- five (75) feet, a deck or patio attached to that principal building may be located closer than the seventy-five (75) foot setback from the ordinary high water mark for the principal building and as may be modified by the setback averaging set forth above. When the deck or patio would extend beyond the computed setback average, it may be allowed as a Special Exception but no closer than 80% of the actual horizontal distance between the principal structure and the ordinary high water mark (i.e., forty-five (45) feet distance between existing house and lake and as would be allowed utilizing the averaging factor; 80% of 45 feet = 36 feet, which would be the closest that the deck or patio could be located pursuant to issuance of a Special Exception). Any location closer would require a variance as defined herein. A deck or patio may be constructed closer to the 100 Year Floodplain and Conservancy/Wetland boundary than the seventy-five (75) foot setback in accordance with the 80% rule set forth above without the benefit of a Special Exception.
- (J) In the case of an extension or addition to a structure which lies closer than the minimum required road or shore setback requirements, and where such extension would not extend closer to the established setback line or shore line than the existing structure to which it is attached using the averaging formula, a Special Exception may be allowed by the Board of Adjustment for such an extension or addition, as long as said extension or addition does not encroach closer to the required setback or shoreline than the existing structure to which it is attached.

- (K) Where an overhang exceeds two (2) feet as defined herein, the additional overhang is not allowed unless the building is relocated in the additional distance from the base setback line, shore setback line or lot line that the overhang exceeds two (2) feet unless a variance is granted by the Board of Adjustment.

(2) Offsets:

- (A) No principal building or its accessory building shall be hereafter erected or altered so that any roofed or enclosed portion thereof, excluding the two (2) foot overhang, as defined herein, is closer to any lot line than the offset distance hereinafter specified by the regulations for the district in which such building is located, with the following exceptions:
1. On a lake shore lot, the boathouse may be permitted within five (5) feet of the ordinary high water mark and only one (1) boathouse per lot is allowed.
  2. In the case of a lot of record, which has a minimum average width of less than one hundred and twenty (120) feet, the offset for the principal structure from a side lot line may be reduced proportionately to the ratio between the actual average width and one hundred and twenty (120) feet, but not less than ten (10) feet, except in accordance with section 3.05(4) or as may be permitted within an approved Planned Unit Development.
  3. Offsets for detached accessory buildings exceeding two hundred (200) square feet in area on lots of one hundred and twenty (120) feet in width or less may be reduced to an amount equal to the proportionate amount between the actual width and one hundred and twenty (120) feet, but not less than five (5) feet, even when consideration is given to Section 3.05(4). However, no detached accessory building shall be located closer than ten (10) feet to any structure used for residential purposes.
  4. Offsets for buildings housing domesticated livestock, fur-bearing animals, pigeons, swine, goats and poultry, shall not be less than fifty (50) feet from a property line. This does not include dog houses or small enclosures housing normal and usual household type pets.
  5. When a detached accessory structure on an adjacent lot lies closer than five (5) feet of the common lot line, a new detached accessory structure may be located the same distance from the common boundary as the existing detached structure on the adjacent lot. If they lie closer than ten (10) feet of each other, the new detached accessory structure shall contain a fire wall sufficient to meet the one hour fire rating contained in the building code. However, unless a common wall with a one hour fire rating is constructed with agreement of both property owners, building side walls may be no closer than three (3) feet. In order to accomplish proper maintenance, a deed

restriction may be recorded prior to issuance of the zoning permit prohibiting the construction of fences between said buildings and permitting maintenance of said buildings from adjacent properties where deemed necessary by the Zoning Administrator.

6. One (1) detached accessory building which is less than two hundred (200) square feet in area may be offset five (5) feet, unless otherwise excepted under any other provision.
  7. In the case of an extension or addition to a structure into the minimum offset distance, and where such extension would not extend closer to the side lot line than the existing structure to which it is attached, a Special Exception may be granted by the Board of Adjustment to allow such an extension or addition as long as said extension or addition does not encroach closer to the side lot line than an existing structure to which it is attached.
  8. Offsets on decks and patios may be reduced to 60% of the required offset distance between the principal structure and the lot line, but shall in no case be located closer than five (5) feet of a lot line. This includes any reduction allowed in Section 3.05(4).
- (B) Where a lot abuts a district boundary line, the offset from such line in the district of less restricted use shall be not less than that required for the district of more restrictive use.
- (C) In the case of multiple family or commercial use structures the offsets may be modified as follows:
1. Two (2) or more buildings on adjoining lots may be erected with common or directly adjoining walls provided the requirements of the state industrial code relative to such construction are complied with, and provided that at both ends of such "row" type buildings the applicable offset requirements shall be complied with.
  2. The required offset may be reduced on one (1) side of a structure provided the offset on the other side is increased by an equivalent amount, and provided the owners of any property adjoining the area of reduced offset shall file with the town board a copy of a recorded deed restriction stipulating that no building shall be erected on said property so as to reduce the combined offset in such case to a distance less than that resulting from the normal application of the minimum offset requirements to both properties, except as permitted under [paragraph] (2)(A) above.
- (D) Maintenance and use of setback and offset areas: Any such required setback or offset area shall be landscaped and kept clean and free from the accumulation of debris or refuse and shall not be used for the storage or display of equipment, products, vehicles or any other material.



- (E) Accessory building location: No detached accessory building shall be erected, structurally altered or placed on a lot so that any roofed or enclosed portion thereof is closer than ten (10) feet to the principal building on said lot. (Ord. No. 14144, §§ XXXVI-XXXVIII, 7-22-86)

### 3.09. Height regulations.

(1) Maximum height restricted: In any district no building or structure shall be hereafter erected or structurally altered to a height in excess of that hereinafter specified by the regulations for that district.

(2) Exceptions: The following shall be excepted from the height regulations of all districts:

- (A) Chimneys and flues.
- (B) Accessory farm buildings, but not to exceed sixty (60) feet in height.
- (C) Subject to approval of the plan commission: Cooling towers, elevator bulkheads., fire towers, monuments, penthouses, stacks, scenery lofts, tanks, water towers, ornamental towers, spires, wireless or broadcasting towers, masts, aerials, and necessary mechanical appurtenances.

(3) Increase permitted: The maximum height of any structure may be increased by not more than ten (10) feet, providing all required offset and setbacks are increased by one (1) foot for each foot which such building exceeds the height limit of the district in which it is located.

### 3.10. Area regulations.

(1) Floor area:

- (A) Any building intended in whole or part for residential purposes shall provide a minimum floor area as hereinafter specified by the regulations for the district in which such building is located. Such minimums are stated in terms of the minimum total floor area required for a building and that portion of the total which must be provided on the first floor level. Such minimum total shall be increased by two hundred (200) square feet for any building not having a basement of at least three hundred (300) square feet in area.
- (B) \_\_\_\_\_ The maximum total floor area of the buildings on a lot shall not exceed that permitted under the floor area ratio as hereinafter specified by the regulations for the district in which such building is located as noted below. The finished basement or exposed basement area used for living space shall not be computed in the maximum floor area ratio requirements but the floor area of an exposed basement may be used in computing the minimum floor area requirement. Garage space in an exposed basement is not required to be computed in the maximum floor area ratio.

- (C) Minimum required floor area shall be measured at each level from the outside edge of wall to outside edge of wall and, for purposes of computing total minimum floor area, shall not include attached or detached garages; other outbuildings; porches; or basements.

Exposed basements and the second floor of one-and-one-half and two-story residences may be included in computing total minimum floor area according to the following schedule:

1. That portion of the exposed basement of an exposed basement residence which has been designed as an integral part of the living area of the home, may be included in computing total minimum floor area when at least one (1) side is completely exposed to grade level and access has been provided to the outside at grade level by means of at least one (1) door, but said area does not have to be included in calculating the maximum floor area ratio requirements.
2. That portion of the second floor of one-and-one-half and two-story buildings which has a minimum distance between the ceiling face and the floor of six (6) feet shall be included in computing the total minimum floor area provided there is a permanent stairway leading from the first floor to the second floor. Where the floor to ceiling height is less than six (6) feet and the area is part of living space in the residence and does not include a closet, attic or similar storage area, said area shall be included in the minimum floor area computation (i.e., "splayed" or sloped ceiling).
3. In split level units, floor area shall be computed as follows:
  - (a) If less than one-half of the lower level(s) is above ground, such level shall be considered a basement and cannot be included in total floor area of the building unless such basement qualifies as an exposed basement [section] in 3.10(1)(C)1 above.
  - (b) If more than one-half of the lower level(s) is above the ground, such areas can be included in determining floor area. If there is no basement below this level(s), two hundred (200) square feet of floor area shall be required in addition to the floor area requirement of the zoning district. This required floor area shall be finished as an integral part of the dwelling unit within six (6) months of the date upon which the building permit is issued.

- (D) The board of adjustment may grant an exception to permit a building of less than the

required minimum floor area where such grant would not be contrary to the spirit or intent of the ordinance, and provided the proposed building would not be of such character or quality as to depreciate the property values of the surrounding area, and provided further that in no case shall a minimum floor area of less than one thousand (1,000) square feet be permitted.

(2) Lot Size:

- (A) No lot shall hereafter be created and no building shall be erected on a lot of less land area or minimum average width than hereinafter specified by the regulations of the district in which such building is located except as may be provided in Subsection 3.10(2)(E), Section 3.05(4) and Sections 3.07(7) (O) and (Q) of this Ordinance. No lot may be created which has less than one hundred (100) feet of frontage on a navigable river or lake, or sixty-five (65) feet of frontage if served by public sewer, pursuant to Section NR115 of the Wisconsin Administrative Code.
- (B) For the purpose of this ordinance, the lot area shall be measured from the base setback line.
- (C) A lot shall be at least as wide as the specified minimum average width for a distance of at least one-half the length of the lot.
- (D) No lot area shall be reduced by any means so as to create a lot of less than the required size or so that the existing offsets, setbacks, open space, or lot area would be reduced below that required by the regulations for the district in which such lot is located except as provided by section 3.05(4).
- (E) Where a lot has less land area, minimum average width for the zoning district in which it is located or frontage as specified in section 3.10(2)(A) and was of record at the time of passage of this ordinance, such lot may be used for any purpose permitted in such district, but not for residential purposes for more than one (1) family; provided, however, that in no case shall the setback and offset requirements be reduced to less than that required in the R-3 zoning district and the open space requirements be reduced to less than ten thousand (10,000) square feet per family.

Such substandard lot shall be in separate ownership from abutting lands. If abutting lands and the substandard lot are in the same ownership, the substandard lot shall not be sold or developed unless it has a minimum width of one hundred (100) feet and a minimum area of twenty thousand (20,000) square feet.

(3) Open space:

- (A) No building shall be erected, structurally altered or placed on a lot so as to reduce the usable open area of such lot to less than that hereinafter specified by the regulations for that district except as provided by section 3.05(4).

- (B) To be considered usable, such open area shall be readily accessible and of a size and shape which can be reasonably considered to provide for the amenities and necessities of light, air, play space, drying yard, garden, etc. Crop, pasture, and wooded land may be included in computing such open area.
- (C) No part of the open space provided for any building shall be included as part of the open space required for another building, except as hereinafter provided for in planned unit developments. See section 3.07(7)(Q).

(4) Accessory Buildings and Structures:

The aggregate total floor area of any accessory buildings in any zoning district may not exceed 3% of the total area of the lot nor exceed the floor area ratio requirements of the appropriate zoning district. An attached garage shall not be included in this 3% limitation. Temporary structures must be included within these allowable square footages:

In no case shall more than two accessory buildings be permitted unless approved by the Town Planning Commission with the following exceptions:

1. On parcels of fifteen (15) acres or more in area, the accessory building areas may be greater than the 3% limit when used solely for the pursuit of agriculture and where the accessory building will house equipment as regulated in Section 3.12(3)(A), and when consistent with the floor area ratio requirements of the zoning ordinance.
2. In all Business and Industrial Districts, when approved by the Planning Commission as part of the plan of operation and site plan review, and where said buildings are used solely accessory to the principal use on said lot.
3. On parcels which are the subject of a Conditional Use Permit and as regulated by the Conditional Use Permit.
4. When a petitioner is proposing to have more square footage of accessory buildings than the 3% limit allows or as excepted above, the Board of Adjustment may grant a Special Exception to the above requirement in accordance with the procedure as outlined in Section 19 of this Ordinance. The petitioner must submit a current plat of survey by a registered surveyor indicating all existing buildings on the parcel, their location, total square footages and the number of stories in existing structures and proposed buildings. The Board of Adjustment may require a deed restriction to be recorded prior to issuance of the zoning permit, restricting the use of the

oversized accessory buildings to uses accessory to the principal use of the premises and may not allow uses prohibited in the zoning district in which the building is located.

5. All accessory buildings shall be constructed in such a way that the exterior appearance is compatible with the design, style, architecture and appearance of the principal structures on the parcel. This determination shall be made by the local building inspector and the Zoning Administrator. In case of dispute, such questions shall be submitted to the Planning Commission and the County Zoning Agency for review and approval in accordance with Section 3.04(3). This does not apply to farming operations on more than thirty-five (35) acres.
6. In no case shall any accessory building be used for purposes not allowed in the underlying zoning district or as may be authorized by a Conditional Use Permit.
7. Where more than two (2) such accessory buildings are proposed, the Town Planning Commission shall review said structures in light of the provisions of Section 3.04(3) and render a finding to allow or disapprove said structure.

### **3.11. Off-street parking.**

(1) Spaces required: Any building hereafter erected or structurally altered shall be provided with an off-street parking space not greater than five hundred (500) feet from the principal use. A parking space shall be considered to be nine (9) feet in width by not less than twenty (20) feet in depth for angled sixty-degree parking and not less than twenty-seven (27) feet in depth for ninety-degree parking, and there shall be at least sixteen (16) feet of width between opposite facing parking stalls for ingress and egress. The following schedule shall be utilized to determine the number of parking spaces for various uses allowed by this ordinance:

- (A) Two (2) spaces per dwelling unit (such dimensions as enumerated above, however, are not required for single family detached housing).
- (B) Auditoriums, churches, theaters, community centers and other places of public assembly: One (1) space for four (4) seats.
- (C) Retail business establishments, restaurants, taverns, clubs, etc: Seven (7) spaces per one thousand (1,000) square feet of primary floor area devoted to the principal use of the property. This requirement does not apply to the area of the building utilized for storage purposes: no additional space will be required for such storage space.
- (D) Wholesale and other general business establishments: One (1) space for each two (2) employees during any twelve-hour period.

- (E) Office buildings: One (1) space for each three hundred (300) square feet of floor area.
- (F) Medical and dental clinics: Three (3) spaces for each doctor and one (1) space for each employee.
- (G) Industrial buildings and warehouse buildings: One (1) space for each two (2) employees during any twelve-hour period.
- (H) Sanitariums, institutions, rest homes, nursing homes: One (1) space for each five (5) beds plus one (1) space for every three (3) employees.
- (I) Hospitals: One (1) space for each two (2) beds plus one (1) space for every three (3) employees.
- (J) Hotels and motels: One (1) space for each guestroom plus one (1) space for every three (3) employees.
- (K) Colleges, vocational and night schools, secondary and elementary schools: One (1) space for each two (2) employees plus one (1) space for every two (2) students except that the requirement for parking at elementary schools may not include student parking. At secondary schools the number of stalls for student parking shall be determined by the administration of that school and appropriate provisions made consistent with the intent of this provision.

(2) Residential parking: Parking of vehicles accessory to a residential use shall be limited to those actually used by the residents or for temporary parking for guests. Vans or pick-up trucks used for private and recreational use or a motor home (recreational vehicle) or one (1) van or pickup truck used in a business or trade or used for transportation to and from a place of employment of the occupant may be parked on a residential property as long as such use does not become a nuisance to the neighborhood.

(3) Parking of trucks and equipment: No other vehicular equipment of a commercial or industrial nature, as excepted in [subsection] (2) above, shall be parked or stored for more than two (2) consecutive hours and four (4) accumulative hours during any twenty-four-hour period on any lot in any zoning district except business districts or as follows:

- (A) Agricultural equipment (such as farm tractors, plows, farm plows, seeders, combines, cultivators, trucks owned and used by the farmer in the operation of his farm, etc.) used in a farm operation.
- (B) One (1) panel, van, or pick-up truck used in the conduct of a conforming business activity being carried on in a residential or agricultural district. The board of adjustment may, if the need is evident, permit more than one (1) such vehicle if the

town board and planning commission indicates it has no objection to the increase in the number of such vehicles. No limitation shall be placed on vans or pick-up trucks if they are used for private non-business or non-commercial recreational purposes.

- (C) A conditional use permit pursuant to section 3.07(7)(V) may be granted to permit the parking of commercial or industrial type vehicles in any zoning district except C-1 conservancy and A-E exclusive agricultural. In business districts where such vehicles are necessary to an otherwise permitted business or commercial use, a conditional use permit will not be required and there are no limitations as to the number of such vehicles which may be parked on the property except as may be hereinafter established under the provisions of the applicable zoning district.

(4) Surfacing: Any off-street parking area, other than that provided for a residence, having a capacity for more than four (4) vehicles shall be surfaced and maintained in a dustless condition.

(5) Screening: Any off-street parking area other than that provided for a residence, which abuts or faces a residence district shall provide a permanent planting screen, landscaped fence, or wall, at least four (4) feet in height, initially, along the side abutting or fronting on a residence district.

(6) Offset: In any off-street parking area, no vehicle shall be allowed to park closer than ten (10) feet to the abutting lot line, except where more restrictive requirements apply.

(7) Setback: No vehicle shall be parked closer than ten (10) feet to the base setback line.

(8) Lighting: Lights provided in any parking area shall be hooded or beamed so as not to create undesirable glare or illumination of adjacent residential property.

### **3.12. Off-street loading and unloading.**

(1) Required: In any local business, general business, limited industrial or general industrial district an off-street loading space shall be provided, in addition to the defined off-street parking area, for every ten thousand (10,000) square feet or fraction thereof in excess of three thousand (3,000) square feet of building area, exclusive of storage area, used for commercial purposes.

(2) Areas: Each such loading space shall have an area at least ten (10) feet wide by forty-five (45) feet long and with a minimum of fourteen (14) feet height clearance.

### **3.13. Mobile homes and trailers.**

(1) Human habitation prohibited: Except within an approved mobile home park or camp, no

trailer or mobile home shall be used for the purpose of human habitation, human habitation being defined as entering the mobile home for any purpose other than maintenance.

(2) A permit for one (1) continuous six (6) month period allowing the human habitation of a mobile home on lands other than an approved mobile home park may be granted by the town board provided:

- (A) The habitation is accessory to the current construction of a principal structure owned by the same person who is applicant for the permit.
- (B) The waste disposal facilities and water supply facilities are approved by the county health department.

(3) Storage prohibited: No mobile home in excess of twenty-five (25) feet in length shall be located or stored on any property except in an approved mobile home park, unless completely enclosed in a structure.

(4) Mobile home parks: Such uses shall not be permitted except in accordance with section 3.07.

### **3.14. Signs.**

(1) Use restricted: In any district no signs shall be permitted except as hereinafter specified by the regulations for that district.

(2) Setbacks and offsets: In any district no sign other than those permitted in a residence or agricultural district shall be permitted closer than twenty (20) feet to the base setback line or to any other lot line, and any sign not directly related to the use of the premises on which it is located shall conform to the setback and offset requirements as would apply to a building in that district.

(3) Hazards or nuisances prohibited: No sign, billboard, or other advertising media which creates a hazard or dangerous distraction to vehicular traffic, or a nuisance to adjoining residential property shall be permitted in any district.

(4) Heights: No free standing sign shall exceed twenty (20) feet in height from the ground and no sign shall in any case exceed the maximum height limit for the district in which it is located.

### **3.15. Legal nonconformity.**

(1) Existing use permitted: The existing lawful use of a building or premises at the time of the enactment of this ordinance or any amendment thereto may be continued although such use does not conform with the provisions of this ordinance for the district in which it is located, subject to conditions hereinafter stated.



(2) Classification and regulation: For the purposes of administration, legal non-conformity shall be classified and regulated as follows:

(A) Non-conforming structures:

1. No structure shall be modernized, expanded or enlarged except in conformity with the applicable district regulations if such total repairs exceed fifty (50) percent of the current fair market value.
2. Where such structure is damaged beyond fifty (50) percent of its current fair market value, it shall not be restored except in conformity with the applicable district regulations or by order of the board of adjustment.
3. All non-conforming structures lying within floodplains shall be flood-proofed.

(B) Non-conforming use of structures and lands:

1. No such use shall be expanded or enlarged.
2. Upon petition to and approval of the county zoning agency, such use may be changed to another use provided the zoning agency determines that the new use would not result in a greater degree of non-conformity than the current use.
3. When any such use is discontinued for twelve (12) consecutive months or eighteen (18) cumulative months during a three-year period, any future use of the land or structure shall conform to the use regulations of the applicable district.
4. When a structure which houses such non-conforming use, is damaged to the extent of more than fifty (50) percent of its current fair market value, it shall not be restored for any use except in conformity with the applicable district regulations.
5. Total structural repairs or alterations to a structure housing a non-conforming use shall not exceed fifty (50) percent of the fair market value of the structure.

(C) Non-conforming lots: The size and shape of such lots shall not be altered in any way which would increase the degree of such non-conformity to the applicable district regulations.

(3) Conditional use status: Subject to the provisions of section 3.07, conditional use status may be granted to existing legal non-conforming uses upon petition of the owner where such use is

determined to be not adverse to the public health, safety, or welfare, would not conflict with the spirit or intent of the ordinance or would not be otherwise detrimental to the community and particularly the surrounding neighborhood. Such conditional use status shall be granted only with the approval of the plan commission and county zoning agency following a joint public hearing in the manner provided in section 19.02.

### **3.16. Prior permit.**

(1) Construction permitted: Nothing herein contained shall require any change in the plans, construction, size or designated use of any building or part thereof for which a building permit has been issued before the effective date of this ordinance and the construction of which shall have been substantially started within six (6) months from the date of such permit.

(2) Subsequently non-conforming: Any such use which does not conform to the use regulations of the district in which it is located shall, however, subsequently be considered a legal non-conforming.

### **3.17. Swimming pool (as defined in section 2.02).**

(1) Use permitted: Above and below ground swimming pools are permitted in any district other than A-E or C-1 districts, subject to the following:

- (A) The pool must be intended to be used solely by the occupants of the principal use of the property on which the pool is intended to be located and their guests.
- (B) Any pool, together with its surrounding walks, patios, diving platforms, bathhouses, and accessory structures shall be so located that the parts of said complex are in conformity with the setback and offset requirements of the applicable district.
- (C) Walls or fences of at least four (4) feet in height shall be provided around the immediate area of the pool to act as a deterrent for unsupervised children gaining access to the pool. Where the pool is an above ground pool, no additional fence or wall shall be required if the walls of the pool are at least four (4) feet above the grade of the land completely surrounding it and extending at least five (5) feet from the walls of the pool. If an access ladder is provided, it shall be so designed so that it can be locked, tipped or otherwise placed to prohibit access to the pool by children.

(2) Permit required: No swimming pool shall be constructed unless a zoning permit has been issued pursuant to section 3.02 of this ordinance.

### **3.18. Guesthouses.**

(1) Uses permitted: Guesthouses, as defined by this ordinance, are permitted in any district in which a single-family dwelling is permitted.

(2) Permanent habitation prohibited: A guesthouse must be used only for occasional occupancy by guests of the owner, and shall not be leased or rented for human occupancy.

(3) Accessory to a single-family dwelling: No guesthouse is permitted unless a single-family dwelling is already present on the lot. Only one (1) guesthouse per lot is allowed.

(4) Area Requirements: No guesthouse is allowed unless the lot upon which the guesthouse is to be located is at least double the minimum area and lot width requirements of the district. This requirement is intended to prevent the creation of a non-conforming lot in the event that the guesthouse is sold.

(5) Building location: A guesthouse must be able to meet the minimum setback, offset and open space requirements of the district in which it is located. This requirement is intended to prevent the creation of a non-conforming structure in the event that the guesthouse is sold.

(6) Floor area: The floor area of a guesthouse may be any size. In order to sell a guesthouse as a separate unit, its floor area must conform with the district regulations in which it is located:

(7) Access provisions: In the event that a guesthouse is sold as a parcel separate from the single family dwelling, there must be direct access to a public road. If this is impossible, the plan commission and county zoning agency may approve a private easement to a public road if the following requirements are met:

- (A) The private easement is at least thirty-three (33) feet for one (1) family and sixty-six (66) feet for two (2) families.
- (B) The creation of a private drive would not adversely affect existing or future development of the area.
- (C) The private drive would insure safe and continuous access for public service vehicles, and those properties served by such easement.

### **3.19. Boathouses.**

(1) Use permitted: Boathouses, as defined by this ordinance and in section 30.121 of the Wisconsin Statutes, are permitted in any district abutting a public or private body of water, in which a single-family dwelling is permitted by right subject to the terms and the conditions set forth herein and section 30.121 of the Wisconsin Statutes. Said boathouse may be used for the storage of marine and accessory items used by the occupants of the lot. Said boathouse shall be placed on a permanent foundation extending below the frost line or a concrete slab and shall contain at least two hundred (200) square feet in area to be considered a boathouse. Where a property line abuts the ordinary high water mark of navigable water and a boathouse is desired but may be within the one-hundred year floodplain, said structure could be allowed subject to the five-foot shore setback provision within the floodplain but not within the floodway subject to the provisions of section 3.04(6) of this ordinance.

(2) Habitation prohibited: A boathouse may not be used for human occupancy or habitation. A boathouse may contain limited plumbing facilities for occasional use and convenience of the occupants of the lot such as having a toilet facility or shower facility convenient for users of the lakefront, but under no circumstances may the boathouse be used for human habitation, human habitation being defined as utilizing the building for occupancy for overnight living or longer periods of time and including the aggregate of normal living activities such as lounging, cooking, eating, sleeping, etc. No boathouse may contain more than one-story and shall not exceed fifteen (15) feet in total height as measured to the peak of the roof from the average grade surrounding the structure.

(3) Accessory to a single family dwelling: No boathouse is permitted unless a single-family dwelling is already present on the lot. Only one (1) boathouse per lot is allowed.

(4) Building location: A boathouse shall not be located closer than five (5) feet to the ordinary high water mark and as provided in section 3.08(1)(I) of this ordinance. Its location relative to offsets may be in accordance with the standards set forth in section 3.08(2) of this ordinance.

(5) Flat roofed surfaces of boathouses may be used as open recreational living areas but shall not be permanently enclosed. Canopies, railings, and access stairs shall be considered ordinary appurtenances.

(6) The maintenance and repair of nonconforming boathouses which extend beyond the ordinary high water mark of any navigable water, shall be required to comply with section 30.121 of the Wisconsin Statutes. (Ord. No. 141-44, §§ XXXIX, XL, 7-22-86)

## **SECTION 4. DISTRICTS**

### **4.01. Establishment of districts.**

For the purpose of this ordinance, the county is hereby divided into zoning districts which shall be designated as follows:

- A-B agricultural business district.
- A-D agricultural density district.
- A-E exclusive agricultural conservancy district.
- A-O existing agricultural overlay.
- A-P agricultural land preservation district
- A-T agricultural land preservation transition district.
- A-1 agricultural district.
- A-2 rural home district.
- A-3 suburban estate district.
- A4 country estate district.
- A-5 mini-farm district.
- AD-10 agricultural density district

- B-1 restricted business district.
  - B-2 local business district.
  - B-3 general business district.
  - C-1 conservancy/wetland district.
  - E-C environmental corridor district.
  - EFD Existing floodplain development overlay district.
  - M-1 limited industrial district.
  - M-2 general industrial district.
  - P-1 public district.
  - Q-1 quarrying district.
  - R-1 residential district.
  - R-2 residential district.
  - R-3 residential district.
  - RRD-5 rural residential density district
- (Ord. of 11-5-84, § V; Ord. No. 141-44, § XLI, 7-22-86)

#### **4.02. Zoning map.**

(1) Districts mapped: The boundaries of zoning districts are shown upon four-square mile aerial photographs and various one (1) inch equals two hundred (200) feet topographic maps as referred to in section 3.0 of this ordinance for all of the unincorporated towns of Waukesha County, and entitled Waukesha County Shoreland and Floodland Protection Ordinance Zoning Maps which are made a part of this ordinance and adopted by reference. In addition, the Final Wisconsin Wetlands Inventory Maps dated September 6, 1984, for Waukesha County were utilized to assist in the preparation and identification of conservancy/wetlands identified on the aerial photographs and accordingly are made a part of this ordinance and are adopted by reference. All the notations, references and other information shown thereon shall be as much a part of this ordinance as if the matters and information set forth by said maps were all fully described herein. Said maps shall be kept on file in the offices of the county zoning agency and are periodically updated as amendments are made, and are for general informational purposes only. For the purpose of local administration, a copy of the appropriate maps shall also be kept on file in the office of each town.

- (A) The A-O agricultural overlay district is a special kind of zoning district established to provide for superimposing upon basic districts additional permissive uses and regulatory standards without disturbing the basic underlying district regulations. As a special district, the applicable procedures for mapping amendments are those found in section 18, changes and amendments.
- (B) The existing floodplain development overlay district (EFD) is an overlay zoning district established to superimpose upon the conservancy zoning district regulatory standards or special regulations which will apply to the underlying zoning district where it is found that such land areas do contain existing development and are located within the floodplain as herein defined. The mapping of this district shall be established pursuant to the procedures set forth in section 18, changes and amendments, of this ordinance.

(2) Determination of boundaries: District boundaries shall be determined by measurement from and as shown on the official zoning maps and in case of any questions as to the interpretation of such boundary lines, the zoning agency shall interpret the map according to the reasonable intent of this ordinance.

- (A) Unless otherwise specifically indicated or dimensioned on the maps, the district boundaries are normally lot lines; section, quarter section or sixteenth section lines; or the centerline of streets, highways, railways or alleys.
- (B) The boundaries of Conservancy/Wetland and A-E districts as drawn are intended to represent the edge of marsh lands, swamps, floodlands, wetlands or the high watermark along streams or other watercourses and where a question arises as to the exact location of those boundaries, they shall be determined by the Zoning Administrator or the County Zoning Agency through the utilization of the best available information such as topographic maps, soil maps, aerial photographs, infield botanical inventories, floodplain studies or other sources of information available which would lend assistance to such a determination and may be finally determined by actual conditions in each specific situation. An appeal to this determination may be made in conformance with Section 17 of this Ordinance. It is generally the intent of this Ordinance to place all lands subject to inundation by the 100 Year Floodplain in either C-1 or A-E districts or EFD districts if the areas are previously developed. There may be areas where floodplains or wetlands have not been indicated or mapped by a C-1 or A-E district or other district and may not have been otherwise indicated as being located within a floodplain.

Where such situations exist and the land may be subject to inundation by the 100 Year Flood and a hydraulic study has not been prepared, the maximum flood of record or other data which may be acceptable to the Department of Natural Resources shall be utilized in applying the floodland standards of this Ordinance until such time as a detailed hydrological study, is prepared and reviewed and found to be adequate by the Department of Natural Resources or its designated agency, in which case the new floodland data will be used in the administration of this Ordinance. In addition, the Zoning Agency shall map these floodplain areas in appropriate zoning districts within six (6) months of the time the Department of Natural Resources has determined the acceptability of the data and said mapping shall be done pursuant to Section 18 of this Ordinance. Any changes or amendments in the mapped floodlands and made a part of this Ordinance shall be approved by the Department of Natural Resources in accordance with the procedure set forth in Section 18 of this Ordinance.

If an area is found that has not been previously identified or mapped as a floodplain or a wetland and not as C-1 or A-E, or a determination of navigability is made and a stream is subsequently found to be navigable, said stream and any shoreland, wetland or floodplains as defined herein, shall immediately become subject to the provisions of this Ordinance. If the 100 Year Floodplain has not been determined, said area of approximate 100 Year Floodplain and wetlands shall be

considered to be subject to the C-1 and/or A-E regulations of this Ordinance. Appropriate procedures to establish Shoreland Zoning districts beyond that which is considered C-1 or A-E shall be initiated under the mapping amendment procedure pursuant to Section 18 of this Ordinance and as set forth above. Water quality related standards of the Shoreland and Floodland Protection Ordinance are in effect immediately upon a determination of navigability or identification of a shoreland/wetland or floodplain (i.e., setback, grading, and land altering activities, vegetation removal). (Ord. No. 141-44, §§ XLII, XLIII, 7-22-86)

## **SECTION 5. CONSERVANCY/WETLAND DISTRICT**

### **5.01 Designation**

This district shall include all shoreland areas that are considered wetlands, marshlands, swamps and/or floodplains as defined in this Ordinance. In order to distinguish the shoreland/wetland within this district from other conservancy lands, the Final Wisconsin Wetlands Inventory Maps dated September 6, 1984 for Waukesha County were utilized and are to be used for reference purposes. In addition, this district has been mapped on the Shoreland/Floodland Protection Ordinance Zoning Maps for Waukesha County, utilizing the Final Wisconsin Wetlands Inventory Maps and the zoning district boundaries shall be determined as provided in Section 4.02 of this Ordinance.

All wetlands shown on the Final Wisconsin Wetlands Inventory Maps within shoreland areas as defined herein and other wetlands subsequently identified by the Zoning Agency, the Army Corps of Engineers or the Department of Natural Resources within the shoreland boundaries but not noted on the Wisconsin Wetland Inventory Maps, are subject to regulations contained in the C-1 Conservancy/Wetland district. Said newly determined areas shall be noted on the Shoreland/Floodland Protection Ordinance Zoning Maps as a C-1 designated area.

In the case of any dispute regarding a boundary between any mapped shoreland/wetland or newly determined shoreland/wetland and any other non-wetland/conservancy designated land, the Zoning Administrator may make a determination or consult with the Department of Natural Resources and coordinate the appropriate onsite investigation to determine the exact boundary.

If the Department of Natural Resources staff and the Army Corps of Engineers concur with the Zoning Administrator that a particular area was incorrectly mapped as a wetland or vice versa, the Zoning Administrator shall have the authority to immediately deny or grant a zoning permit in accordance with the regulations applicable to the correct zoning district designation as it may be modified by such field determination. A notation shall be made on the map indicating that such a change has been made for future reference purposes. Utilizing the procedures above, if the area is found to be not wetland and outside of a floodplain, and inappropriately mapped in a C-1 or A-E category, the Zoning Agency shall have the authority to designate a district for the subject area consistent with the upland category which may exist adjacent to the site without necessity of a formal amendment process and shall note said changes on the zoning map.

## **5.02. Purpose and intent.**

This district is intended to preserve and protect environmentally sensitive lands by limiting the uses and intensity of uses that may be placed upon them to maintain safe and healthful conditions, to prevent water pollution, to protect fish spawning grounds and wildlife habitat, to preserve shore cover and natural beauty and to control building and development in said conservancy/wetlands whenever possible. When development is permitted, it shall occur in a manner that minimizes adverse impacts upon the area in question.

These lands are often in a natural, relatively undisturbed state and shall include wetlands, marshlands, swamps, floodlands and areas up to the ordinary high water mark along streams or other navigable water.

## **5.03. Use regulations.**

### **(1) Permitted uses:**

- A. Hiking, fishing, trapping, hunting, swimming and boating harvesting of wild crops such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds in a manner that is not injurious to the natural reproduction of such crops.
- B. Pasturing of livestock and the construction and maintenance of fences, provided no filling, flooding, draining, dredging, ditching, tiling or excavating is done.
- C. The practice of silviculture including planting, thinning and harvesting of timber, provided that no filling, flooding, draining, dredging, ditching, tiling or excavation is done except as required to construct and maintain roads which are necessary to conduct silvicultural activities which cannot, as a practical matter, be located outside the wetland and which are designed and constructed to minimize the adverse impact upon the natural functions of the conservancy/wetland area or except as required for temporary water level stabilization measures to alleviate abnormally wet or dry conditions which would have an adverse impact upon the conduct of silvicultural activities if not corrected. Where such silvicultural practices will take place on areas larger than five (5) acres in size, a forest management plan prepared in cooperation with a state forester shall be submitted to and approved by the Waukesha County Land Conservation Committee and the county zoning agency prior to its implementation.
- D. The cultivation of agricultural crops if cultivation can be accomplished without filling, flooding or artificial drainage of any wetlands through ditching, tiling, dredging or excavating except that flooding, dike and dam construction and ditching shall be allowed for the purpose of growing and harvesting cranberries. Where ditching and drainage for agricultural purposes is to take place outside of a wetland



but within the conservancy/wetland area, said work may be permitted subject to review and approval by the Waukesha County Land Conservation Committee and the county zoning agency without the benefit of a conditional use permit. Construction and maintenance of roads shall be permitted if the roads are necessary for agricultural cultivation and cannot be located outside the conservancy/wetland area and are designed and constructed to minimize the adverse impact upon the natural functions of any wetland area. No new drainage systems will be permitted in wetlands within the conservancy/wetland zoned areas. Sod farms will be allowed subject to review and approval of a conservation plan by the Waukesha County Land Conservation Committee and the Waukesha County Zoning Agency.

- E. The maintenance and repair of existing agricultural drainage systems, including ditching, tiling, dredging, excavating and filling necessary to maintain the level of drainage required to continue any existing agricultural use. This includes the filling attendant to the disposal of dredged spoil material adjacent to the drainage systems provided that dredged spoil is placed on existing spoil bands where possible or immediately adjacent to the ditches or removed from the conservancy/wetland area altogether.
- F. The construction or maintenance of private noncommercial piers, docks or walkways built on pilings, including limited excavating and filling necessary for such construction and maintenance.
- G. Maintenance, repair, replacement or reconstruction of existing town, county and state highways and bridges including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.
- H. The establishment of public and private parks and recreation areas, wilderness or walk in unimproved boat access sites, natural and outdoor education areas, historic and scientific areas, wildlife refugees, game preserves and wildlife habitat areas provided that no filling is done and that no other improvements and/or construction occurs within said conservancy/wetland area. The owner or operator of any new private park, recreation or wildlife area to be located in a wetland area, shall be required to notify the county zoning agency of the proposed project before beginning any construction activities. Ditching, excavating, dredging, dam and dike construction may be allowed in said areas for the purpose of improving wildlife habitat or to otherwise enhance wildlife values, but said activities shall only be approved after review and approval and issuance of a conditional use permit. Launching ramps, hiking and riding trails may be permitted but said ramps and trails may not include filling or other construction activity within wetlands and shall not impact the storage or flow of surface water and flood water. Said filling and construction activity outside of the wetland but which may be located within a conservancy/wetland zoning district will be subject to conditional use procedures contained herein.
- I. The construction and maintenance of electric, gas, telephone, water and sewer

transmission and distribution facilities, by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light, power or water to their members and the construction or maintenance of railroad lines provided that:

- (1) The transmission and distribution facilities and railroad lines cannot, as a practical matter, be located outside the wetland.
- (2) Such construction or maintenance is done in a manner designated to minimize adverse impact upon the natural functions of the wetland. Major electrical generative facilities and high voltage transmission lines that have obtained a certificate of public convenience and necessity under section 196.491, Wisconsin Statutes, are not subject to the requirements of this ordinance.

J. The construction or maintenance of nonresidential buildings provided that the building is essential for and used solely in conjunction with the raising of waterfowl, minnows or other wetland or aquatic animals or some other use permitted in the conservancy/wetland district. Wherever possible, said buildings shall be located outside of the wetland, and such building may not be used for human habitation and shall not exceed five hundred (500) square feet in floor area. Limited filling and excavating necessary to provide structural support for the building is permitted. Where the use is intended for commercial purposes, said use and buildings shall be subject to the provisions of section 3.07(7)(G).

(2) Specific prohibition:

A. Any use not permitted above is considered to be prohibited unless the area is rezoned to another appropriate district in accordance with the provisions contained herein.

(3) Area Regulations:

There are no specific minimum lot size requirements although conservancy/wetland zoned lands that lie within a larger parcel or tract of land, the remainder of which is zoned in any other district, shall have a minimum area requirement of that non-conservancy district.

## SECTION 6. A-E EXCLUSIVE AGRICULTURAL CONSERVANCY DISTRICT

### 6.01. Purpose.

This district is intended to apply to those areas of Waukesha County presently in agricultural use by virtue of either cultivation, pasture or in some other way, and which if they were not being used for agricultural purposes would be classified as conservancy lands due to inherent wet soil characteristics and the presence of natural vegetation indicative of wet soils. The intent of the district is to preserve and maintain agricultural uses on lands suited for such purposes. They often

include lands poorly suited for urban or suburban development while being particularly well suited for some types of agricultural use either with or without a higher level of soil management. In this district structures related to farm operations, including dwellings, are deemed consistent with the purpose of this section where the location of buildings associated with the permitted agricultural operation is found to conform with health, sanitation and safety provisions of this and any other state regulation or local ordinance. Determination of such suitability shall be evidenced by onsite examination and evaluation. The intent for mapping purposes is that lands within this district shall have exhibited those agricultural uses in the past. It is not the intent of this section to promote or permit the conversion of wetlands.

#### **6.02. Permitted uses.**

- (A) Any uses permitted in the C-1 conservancy/wetland district except that no buildings, fill, drainage or dredging of AE zoned lands which contain shorelands/wetlands as identified on the Final Wisconsin Wetlands Inventory Maps may be allowed except as may be allowed under section 5.03 of this ordinance.
- (B) Ordinary farm uses, including dairying, livestock, poultry raising and truck farming.
- (C) Accessory uses within buildings normally associated with permitted agricultural operations including single-family dwellings and shelters for housing animals, except that no structure shall be located in a floodplain or upon lands not suited due to soil limitations (Any structures within floodlands must conform to section 3.04(6)(A) of this ordinance.)
- (D) Nurseries, greenhouses and hatcheries limiting the retail sales of such produce to that which is produced by the farm operator.
- (E) Roadside stands.
- (F) Signs not to exceed forty (40) feet in area displaying the name of the farm or farm organization. (Ord. No. 141-44, §§ XLVI, 7-22-86)

#### **6.03. Conditional uses.**

- (A) Conditional uses as provided in sections 3.07(7)(A) and 3.07(7)(C).

#### **6.04. Building location.**

- (1) Setback: Fifty (50) feet minimum
- (2) Offset: Fifty (50) feet minimum.

**6.05. Height regulations.**

- (1) Dwelling: Thirty-five (35) feet maximum.
- (2) Accessory buildings:
  - (A) Farm, sixty (60) feet, other fifteen (15) feet, except that this height limit may be increased to allow structures up to one hundred (100) feet where the setback and offset is equal to or exceeds the height of the structure itself.

**6.06. Area regulations.**

- (1) Floor area: Minimum required for single-family dwelling where permitted.
  - (A) Minimum required:
    - 1. First floor: Nine hundred (900) square feet.
    - 2. Total, one (1) family: One thousand (1,000) square feet.
  - (B) Maximum floor area ratio permitted Ten (10) percent.

**SECTION 6.1 A-P AGRICULTURAL LAND PRESERVATION DISTRICT.**

**6.11. Purpose and intent.**

The purpose of the A-P agricultural land preservation district are:

- 1. To preserve productive agricultural lands for the production of food and fibre.
- 2. To preserve productive farms by preventing land use conflicts between incompatible uses.
- 3. To control the cost of public services through efficient extension of those services.
- 4. To maintain a viable agricultural base and associated agricultural supportive uses.
- 5. To pace and shape development in the changing rural landscape.
- 6. To implement the provisions of the Waukesha County Agricultural Land Preservation Plan.
- 7. To comply with the provisions of the Wisconsin Farmland Preservation Act which permits eligible land owners to receive tax credits under section 71.09(11) of the Wisconsin Statutes.

**6.12. [Lands to be included within A-P agricultural land Preservation district.]**

Lands to be included with the A-P agricultural land preservation district are as follows:

- A. Lands historically exhibiting good crop yields or those capable of such good crop yields by virtue of their good soil characteristics.
- B. Lands which have been demonstrated to be productive for dairying, livestock raising and grazing and have records of good production levels.
- C. Other lands which form an integral part of such farm operations.
- D. Lands use for the production of specialty crops such as onions, herbs, sod, fruits and vegetables.
- E. Lands which are capable of productive use through economically feasible improvements such as irrigation or tile draining when wetlands are not thereby disturbed or converted.

### 6.13. Permitted uses.

- A. Any permitted use as described in the A-E exclusive agricultural district.
- B. General farming, including agricultural, dairying and floraculture forestry, livestock grazing, hay baling, grain drying for grain originating on or in connection with a single farm operation, livestock raising, paddocks, stables, truck farming, viticulture, nurseries, sod farms, providing only that farm buildings housing animals, barnyards and feedlots, shall not be located within a floodland nor closer than one hundred (100) feet to any navigable water course nor closer than one hundred (100) feet to an existing adjacent dwelling or residentially zoned lot.
- C. Farm dwellings for farm owners, which for the purpose of this ordinance, shall include residences to be occupied by a person who, or a family at least one member of which, earns a substantial part of his or her livelihood from the farm operations on the farm parcel, or is a parent or child of the operator (owner) of the farm.

Each such additional dwelling shall be placed on a separately described parcel created under minor land division regulations of the town in which it is located or under the Shoreland Floodland Subdivision Control Ordinance subject to the following:

- 
- (1) Permitted Uses: The lots hereby created will meet the requirements of the R-1 District, which requires a minimum lot area of one (1) acre with one hundred and fifty (150) feet of minimum average width per lot.
  - 2. Conveyance to a person or persons other than those related to the farm operator shall be restricted by Deed restriction at the time of recording of the

land division document, until such time as the parcel becomes rezoned to a zoning district other than A-P agricultural land preservation district permitting single family residences as a right.

within a floodland nor closer than one hundred (100) feet to any navigable water course nor closer than one hundred (100) feet to an existing adjacent dwelling or residentially zoned lot.

- D. Existing dwellings or dwellings remaining after the consolidation of a farm enterprise. Parcels thereby created as a result of consolidation shall be not less than one (1) acre in size and shall meet the offset and setback requirements of the R-1 residential district. New non-farm dwellings are prohibited. (Ord. of 11-5-84, § VI) (**Cross reference**--Shoreland and floodland subdivision control ordinance, App. D)

#### **6.14. Conditional uses.**

- A. Conditional uses as provided in sections 3.07(7)(A), 3.07(7)(C), 3.07(7)(D), 3.07(7)(E), 3.07(7)(G), 3.07(7)(K), 3.07(7)(R), 3.07(7)(S), 3.07(7)(T), 3.07(7)(V), 3.07(7)(W), and 3.07(7)(X), except that in the cases of [sections] 3.07(7)(R), 3.07(T) and 3.07(V), such uses may be allowed only if incidental to and compatible with the continued long term agricultural use of the lands which make up the major portion of lands in the A-P district (i.e., private hunt clubs during the non-growing season and sand and gravel removal on non-productive lands with restoration of the site to a condition suitable for agricultural use). (Ord. of 11-5-84.)

#### **6.15. Building location.**

- (1) Setback: Fifty (50) feet minimum.
- 2) Offset: Fifty (50) feet minimum. (Ord. of 11-5-84, § VIII)

#### **6.16. Height regulations.**

- (1) Principal building: Thirty-five (35) feet maximum.
- (2) Accessory building: Sixty (60) feet maximum, except that both principal and accessory buildings may be increased to not more than one hundred (100) feet where the setback and offset equals or exceeds the height of the structure.

#### **6.17. Area regulations.**

- (1) Floor area, minimum required:
  - a. First floor: Nine hundred (900) square feet.
  - b. Total, one (1) family: One thousand one hundred (1,100) square feet.
- (2) Maximum floor area ratio permitted: Ten (10) percent.

#### **6.18. Lot size.**

(1) Minimum parcel size: Thirty-five (35) acres, except as may be provided in [section] 6.13(D) for those residual existing dwellings and parcels that result due to farm consolidation.

(2) Minimum average width: Six hundred (600) feet, excepted as provided in [section] 6.13(D).

### **SECTION 6.2. A-B AGRICULTURAL BUSINESS DISTRICT**

#### **6.21. Purpose.**

The primary purpose of this district is to maintain, encourage and promote agriculturally related business endeavors on appropriate lands within the community. Such endeavors properly located and regulated serve to support and enhance the viability of agriculture as an economic activity.

For mapping purposes--It is the intent of this ordinance that suitable areas be described to provide for buffering from adjacent uses and that the minimum size of any proposed establishment of the A-B district be five (5) acres in extent. Existing uses which may come under the A-B agricultural business district shall be considered on a case-by-case basis and may be less than five (5) acres if the existing parcel upon which the use is located contains less than the required five (5) acres, with the plan commission making a determination as to compatibility with the existing site and the surrounding or adjacent uses.

#### **6.22. Permitted uses.**

All the following uses permitted by right in the A-B agricultural business district are subject to site plan and plan of operation approval of the town plan commission and the county zoning agency:

- A. Warehousing, transfer and transport services of agricultural commodities.
- B. Horticultural services, including the retail sale of nursery landscape material and other agricultural crops and related commodities. (Ord. of 11-5-84. § IX)

- C. Feed milling operations.
- D. Agricultural machinery sales and services.
- E. Cheese factories.
- F. Bulk milk collection, storage and distribution facilities.
- G. Veterinarian services.
- H. Custom grain drying.
- I. Poultry and/or egg production.
- J. Residential use may be permitted only in connection with or accessory to otherwise permitted uses.
- K. Any other use consistent with stated intent of this district subject to approval of the town planning commission and county zoning agency.

**6.23. Conditional uses.**

- A. Conditional uses as provided in sections 3.07(7)(A), 3.07(7)(C), 3.07(7)(E), 3.07(7)(F), 3.07(7)(G), 3.07(7)(K), 3.07(7)(W), 3.07(7)(X).

**6.24. Building location.**

- (1) Setback: Fifty (50) feet minimum.
- (2) Offset.
  - (A) Buildings used for commercial purposes which include the housing of livestock one hundred (100) feet minimum unless adjacent district is the A-P, A-B, A-O or A-E agricultural districts, in which case twenty (20) feet minimum shall apply.
  - (B) Buildings used for commercial purposes not involving livestock housing or animal waste storage, ten (10) feet minimum.
  - (C) The integrated site plan will relate buildings, parking areas and any loading dock facilities that may be necessary and accessory to the use and shall be governed by suitable contemporary design criteria.

**6.25. Height regulations.**



(1) Principal building: Thirty-five (35) feet maximum

(2) Accessory building: Sixty (60) feet maximum, except that both principal and accessory buildings may be increased to more than one hundred (100) feet when the setback and offset equals or exceeds the height of the structure.

## **6.26. Area regulations.**

(1) Floor area:

- (A) Minimum required for residential purposes: Nine hundred (900) square feet per dwelling unit.
- (B) Maximum floor area ratio: Fifty (50) percent of the site.

(2) Lot size:

- (A) Minimum area: Five (5) acres, unless the plan commission determines that an existing use or a smaller parcel is appropriate and consistent with section 6.21.
- (B) Minimum average width: Three hundred (300) feet.

## **SECTION 6.3. A-0 EXISTING AGRICULTURAL OVERLAY DISTRICT**

### **6.31. Purpose.**

The purpose of this district is to allow for the continued agricultural use of land while recognizing that other land uses of a rural or semi-rural nature other than farming or agricultural may be needed in the general area. It is anticipated that the assignment of this overlay district to specific parcels of land will provide a greater degree of freedom for farm operators and for town plan commissions, town boards and the county zoning agency in dealing with situations where present owners are committed to continuing the agricultural use and the potential of incompatibility is present. The basic intent of the district is similar to that upon which conditional uses in this ordinance are promised. This district will grant the uses permitted in the A-P district as well as the uses of the underlying basic district.

## **SECTION 6.4. A-T AGRICULTURAL LAND PRESERVATION DISTRICT**

### **6.41. Purpose and intent.**

The purpose of this district is to protect and encourage farming in areas that are anticipated to develop consistent with adopted plans for the community. The district will serve as a holding or transition zone enabling farmers to continue in the practice of farming and making qualified farmers eligible to claim income tax credits under the State of Wisconsin's Agricultural Land Preservation Program. Because lands in this district are recognized as possessing development potential

consistent with adopted plans for the community, it is the policy of the county zoning agency to conduct a periodic comprehensive review of all A-T agricultural land preservation transition district lands at least every (5) years beginning in 1990. Additional stated purposes of the district are as follows:

1. To preserve productive agricultural lands for the production of food and fiber.
2. To preserve productive farms by preventing land use conflicts between incompatible uses.
3. To control the cost of public services through efficient extension of those services.
4. To maintain a viable agricultural base and associated agricultural supportive uses.
5. To pace and shape development in the changing rural landscape by preventing premature development of lands intended to be served by municipal services or when such land is determined to be necessary for growth and development by the community and by virtue of other factors.
6. To implement the provisions of the Waukesha County Agricultural Land Preservation Plan.
7. To comply with the provisions of the Wisconsin Farmland Preservation Act which permits eligible land owners to receive tax credit under section 71.09(11) of the Wisconsin Statutes. (Ord. of 11-5-84, § X)

**6.42. [Land to be included with A-T agricultural land preservation transition district.]**

Lands to be included within the A-T agricultural land preservation transition district are as follows:

- A. Lands historically exhibiting good crop yields or those capable of such good crop yields by virtue of their good soil characteristics.
- B. Lands which have been demonstrated to be productive for dairying, livestock raising and grazing and have records of good production levels.
- C. Other lands which form an integral part of such farm operations.
- D. Lands used for the production of specialty crops such as onions, herbs, sod, fruits and vegetables.
- E. Lands which are capable of productive use through economically feasible improvements such as irrigation or tile draining when wetlands are not thereby disturbed or converted.

- F. Lands suited for development but which, for the present, lie beyond recognized needs to provide land for growth and development in the near term but do lie within areas recognized as needed for growth and development in the long term. (Ord. of 11-5-84. § X)

**6.43. Permitted uses.**

- A. Any permitted use as described in the A-P agricultural land preservation district. (Ord. of 11-5-84, § X)

**6.44. Conditional uses.**

- A. Conditional uses as provided in sections 3.07(7)(A), 3.07(7)(C), 3.07(7)(D), 3.07(7)(E), 3.07(7)(G), 3.07(7)(K), 3.07(7)(R), 3.07(7)(S), 3.07(7)(T), 3.07(7)(V), 3.07(7)(W), and 3.07(7)(X), except that in the cases of 3.07(7)(R), 3.07(7)(T) and 3.07(7)(V), such uses may be allowed only if incidental to and compatible with the continued long term agricultural use of the lands which make up the major portion of lands in the A-T district (i.e., private hunt clubs, during the non-growing season and sand and gravel removal on non productive lands with restoration of the site to a condition suitable for agricultural use). (Ord. of 11-5-84. § X)

**6.45. Building location.**

- (1) Setback: Fifty (50) feet minimum.
- (2) Offset: Fifty (50) feet minimum. (Ord. of 11-5-84, § X)

**6.46. Height regulations.**

- (1) Principal building: Thirty-five (35) feet maximum.
- (2) Accessory building: Sixty (60) feet maximum, except that both principal and accessory buildings may be increased to not more than one hundred (100) feet where the setback and offset equals or exceeds the height of the structure. (Ord. of 11-5-84. § X)

**6.47. Area regulations.**

- (1) Floor area, minimum required:
  - A. First floor: Nine hundred (900) square feet.
  - B. Total, one (1) family: One thousand one hundred (1,100) square feet.

(2) Maximum floor area ratio permitted: Ten (10) percent. (Ord. of 11-5-84, § X)

**6.48. Lot size.**

(1) Minimum parcel size: Thirty-five (35) acres, except as may be provided in [section] 6.13(D) for those residual existing dwellings and parcels that result due to farm consolidation.

(2) Minimum average width: Six hundred (600) feet, except as provided in [section] 6.13(D). (Ord. of 11-5-84. § X)

**SECTION 6.5 AD-10 AGRICULTURAL DENSITY-10 DISTRICT**

**6.51 General Regulations.**

- A. Purpose and Intent: The purpose of this zoning district is to protect and encourage the preservation of Prime Agricultural tillable land, (U.S.D.A. Class I and II soils) in minimum 20 acre contiguous areas, to discourage residential development on agriculturally productive and environmentally sensitive areas, provide for some marketability of such lands, to encourage more economical use of lands suited to limited and controlled residential development by permitting more intensive use of such lands without changing the overall rural character of the town or population density of the town as set forth in the adopted Land Use Plan. Additional stated purposes of the district are as follows:
1. To transfer residential density opportunities to promote the preservation of the rural character of the town by encouraging farm fields, pastures, orchards, and natural open spaces to be retained either as common open spaces, or as part of a farm operation known as "agricultural preserved land."
  2. To achieve the optimum residential environment while recognizing the rural character of the Town. The density transfer technique is designed to permit variable lot sizes in the utilization of the most desirable terrain for housing sites while encouraging preservation of prime agricultural tillable lands worthy of such preservation.
  3. This district encourages the transfer of residential development rights from one area of a parcel to another, from one tract of land to another, and from the RRD-5, the AD-10, A-E and C-1 districts thereby allowing the increase in density of development on suitable lands for development in exchange for establishing the preservation of more desirable agriculturally productive lands known as "agricultural preserved lands".
  4. The transfer of development rights may only take place between the RRD-5, the AD-10, C-1 and A-E districts, except that only a maximum of 20% of the

transferring land zoned C-1 Conservancy/ Wetland or A-E Exclusive Agricultural Conservancy may be counted toward the overall density to be provided for the receiving land.

- B. Review of Proposed Development - Where a development is to occur involving the transfer of development rights and establishment of "preserved lands", approval by the Town Planning Commission and the County Zoning Agency shall be required. The development proposed shall conform to the following standards:

1. The shape and arrangement of preserved lands designated for agricultural use should be consistent with practical requirements for an agricultural activity, and be of a justifiable value for farm use, or as a contribution to the goal of preserving the rural environmental character. The preserved areas must be at least twenty (20) acres of contiguous area, not necessarily on the same parcel, and consist of U.S.D.A. Class Prime or statewide classified Agricultural soils unless a local Land Use Plan has been adopted which further limits the classification to a specific classification of soils, and be tillable without the necessity of removing mature vegetation.
2. Only 20% of the C-1 or A-E zoned areas may be used when calculating the overall density. Where more than 50% of the site is zoned in the C-1 or A-E category, only that amount of acreage up to the 50% amount may be used in the above calculation for purposes of computing allowed density. Where the calculation results in a fraction of .5 or greater, the density may be "rounded up". This rule shall apply only when a local Land Use Plan has been adopted and specifically addresses the issue of crediting such areas for development purposes.

EXAMPLE: 100 acres - Tract of Land  
 90 acres - Zoned C-1  
 10 acres - Zoned AD-10

50% of 90 acres = 45 acres  
 20% of 45 acres = 9 acres

Total qualifying area considered  
 for density limits = 19 acres.

Number of dwelling units allowed = 1.9 rounded up to 2.

3. The preserved lands shall be retained in one of the following manners:
  - a. Development would occur at the allowable densities with the larger parcels having the building site outside of the agriculturally significant and tillable area and the open area or agricultural lands (preserved lands) could be owned and retained by the party

transferring the rights and would be protected through a deed restriction or covenants recorded with the Waukesha County Register of Deeds so noting the part that development rights have been utilized for the subject land. No additional development rights would accrue to that site until such time as it could be served with municipal sewer and a zoning change is approved by the Town and County in accordance with an adopted local Land Use Plan.

- b. All lot owners within the developed area for which the preserved lands are protected could own an undividable interest in said preserved land. Development of those lands may not occur until such time as sewer is available and a zoning change is approved by the Town and County in accordance with an adopted local Land Use Plan. This can be accomplished without requiring a conditional use for a Planned Unit Development.
  - c. The preserved lands, when noted in the adopted Park and Open Space Plan, may be retained in public ownership.
4. On a parcel which is zoned AD-10, the development density shall not exceed ten (10) acres for each dwelling unit with credit for the C-1 or A-E zoned lands in accordance with Section 6.51 (B)(2).
5. In order to encourage development in areas designated for residential growth on an adopted local Land Use Plan, development rights may be transferred from this zoning district (AD-10) to an RRD-5 district at a rate of 1.2 dwelling units per ten (10) acres.
6. In order to preserve the rural character as well as the efficiency and safety of existing road systems, the inappropriate development of lots strung out along such roads with individual driveway accesses from each lot will be minimized. The goal of this provision is to encourage grouping of lots on an interior street which will then access the existing road system.
7. For the purpose of transferring residential development rights, the petitioner shall provide documentation at the time of submittal of the preliminary plat indicating that he is the owner of the subject property or has the authority under the terms of a written contract (Offer to Purchase), to make commitments on the transferring land.
8. No building intended in whole or part for residential use shall be erected or relocated unless the lot on which it is located meets the required density factor, or has allocated to it, through the transfer program, sufficient additional preserved lands to meet the required density factor for the district in which it is located. Where the total area, or the prorated factor involved includes more than one zoning district, the density factor, as calculated using the entire project, shall apply.

9. Any land claimed in addition to the actual described residential lots, for credit toward meeting the density factor requirement, shall have its status permanently established, and guaranteed, either by dedication to the public, or by appropriate covenants running with the lands, in conveyance of agricultural easements. Such covenants and easements shall be recorded in the office of the Register of Deeds and shall restrict the property against any development or use except as is consistent with its preservation as agricultural land or as a form of common open space unless sewer becomes available, and the zoning of the property is changed in accordance with adopted local Land Use Plan. The preserved land status of any parcel shall be indicated on the official zoning map.
10. In addition to requiring an appropriate open space or an agricultural easement on the transferring lands in favor of the town and/or county, covenants shall be placed in the title of each dwelling unit, giving the owner enforceable rights to prevent the future development of the transferring lands until such time as sewer is available and the subject property is rezoned to allow additional development.

C. Use Regulations:

(1) Permitted Uses:

- a. Single family uses and not more than one two-family residential dwelling (duplex) pursuant to issuance of a conditional use permit pursuant to Section 3.07(7) (0) and the floor area requirements contained herein.
- b. Ordinary farm uses (including dairy, livestock, poultry raising, raising of crops, and truck farming) on parcels having a minimum of five (5) acres and subject to the requirements of Section 8.01(1) (A).
- c. Accessory uses and buildings normally associated with an agricultural operation including garages, stables, and poultry houses. Buildings used for housing animals shall maintain a minimum offset of fifty (50) feet from all adjacent lot lines.
- d. Signs:
  1. Sign not to exceed twelve (12) square feet in area displaying the name of the farm or farm organization.
  2. Subdivision signs in accordance with the sign provisions of this Ordinance.
- e. Wholesale nurseries, greenhouses and hatcheries.
- f. Roadside stands subject to the following:
  1. Offstreet parking for a minimum of five (5) vehicles must be

- provided.
- 2. No such stands shall be closer than thirty (30) feet to the base setback line or closer than twenty (20) feet to any lot line.
- g. Home occupation and professional offices as regulated herein.
- h. Hobby kennels as regulated in Section 7.01 (K).

## 6.52 Building Location.

- (1) Setback: Fifty (50) feet minimum
- (2) Offset: Twenty (20) feet minimum

## 6.53 Height Regulations.

- (1) Principle structure: Thirty-five (35) feet maximum
- (2) Accessory Buildings:
  - a. Farm buildings: Sixty (60) feet maximum
  - b. Other accessory buildings: Fifteen (15) feet maximum

## 6.54 Area Regulations.

- (1) Floor Area:
  - a. Single family residential: Minimum required first floor--Nine hundred (900) square feet. Total: Fifteen hundred (1,500) square feet.
  - b. Two family: Minimum required first floor (per family) - Seven hundred and fifty (750) square feet. Total (per family): Fourteen hundred (1,400) square feet.
  - c. Maximum floor area ratio: 15%.
- (2) Lot size:
  - a. Minimum required area - one (1) acre
  - b. Minimum average width - one hundred and fifty (150) feet.
- (3) Open space: Thirty thousand (30,000) square feet.
- (4) Density Division Standards and Lot Size:
  - (A) A parcel which is zoned AD-10, may be developed at no more than a ten (10)



acre density per dwelling unit. No individual lot may be less than one (1) acre, have less than a minimum average width of one hundred and fifty (150) feet and shall have open space of at least thirty thousand (30,000) square feet per family.

1. Only 20% of the C-1 or A-E zoned areas may be calculated in the overall density. Where more than 50% of the site is zoned in the C-1 or A-E categories, only that amount of acreage up to the 50% amount may be used in the above calculations for purposes of computing allowed density.
2. Residential development shall be allowed on non-prime agricultural soils, (U.S.D.A. Class III and below) and non-tillable or mature vegetated areas consisting of Class I and II soils, unless the area of prime agricultural soils is less than twenty (20) contiguous acres.
3. All farm fields which must be preserved are those which are a minimum of twenty (20) acres in contiguous area and consist of U.S.D.A. Class I and II prime agricultural tillable soils. The twenty (20) acre minimum area must be on the subject parcel or contiguous to prime agricultural tillable areas on an adjacent parcel.

(B) In any RRD-5 zoned district, development shall occur at a 1.2 dwelling units per ten (10) acres of AD-10 zoned land.

1. Only 20% of the C-1 or A-E zoned areas may be calculated in the overall density. Where more than 50% of the site is zoned in the C-1 or A-E categories, only that amount of acreage up to the 50% amount may be used in the above calculations for purposes of computing allowed densities.
2. In the RRD-5 Residential district, development shall only be allowed on non-prime agricultural soils, (U.S.D.A. Class III and below) or Class I and II soils which are not tillable because of natural vegetation, unless on prime agricultural soils of less than twenty (20) contiguous acres.
3. All farm fields in the RRD-5 district which must be preserved are those areas which are a minimum of twenty (20) acres in contiguous area and consist of (U.S.D.A. Class I and II) prime agricultural soils and are tillable. The twenty (20) acre minimum area may be on the subject parcel or contiguous to prime agricultural areas on an adjacent parcel.

## SECTION 6.6 A-5 MINI-FARM DISTRICT

### 6.61 Intent and Purpose.

This District is intended to provide for very low-density single-family residential development and the conversion of older farm dwellings to two-family units in predominantly rural areas in order to maintain, to some degree, the agricultural character of the property. These lands are best suited for small farm units, i.e., truck farms, horse farms, hobby farms, orchards and other similar agriculturally-related activities and usually contain a predominance of U.S.D.A. defined statewide significant category soils or prime category soils on parcels which do not qualify for agricultural preservation zoning or in areas which have an existing pattern of scattered or low-density residential development. Such a district is intended to be used to implement the County or Regional Land Use Plan category entitled "Other Agricultural or Rural Land".

### 6.62 Use Regulations.

#### (1) Permitted Uses:

- (A) Any use permitted in the A-1 Agricultural District.
- (B) Two-family uses in converted farm dwellings existing on the date of adoption of this Ordinance (June 23, 1970) subject to issuance of a conditional use permit, contained in Section 3.07(7)(O).

#### (2) Permitted Accessory Uses:

- (A) Any of those accessory uses in the E-C Environmental Corridor District.

### 6.63 Building Location.

- (1) Setback: Fifty (50) feet minimum.
- (2) Offset:
  - (A) Thirty (30) feet minimum.
  - (B) Fifty (50) feet for any accessory building having domestic livestock, fowl, poultry or other animals except household-type pets.

### 6.64 Height Limitations.

- (1) Principal Building: Thirty-five (35) feet.
- (2) Accessory Building:
  - (A) Farm: Sixty (60) feet minimum.
  - (B) Other: Fifteen (15) feet minimum.

### 6.65 Area Regulations.

(1) Floor Area:

(A) Minimum required:

- (1) First floor: Nine hundred (900) square feet.
- (2) Total: Fifteen hundred (1,500) square feet.

(B) Maximum F.A.R. permitted: 10%.

(2) Lot Size:

(A) Minimum area: Five (5) acres.

(B) Minimum average width: Three hundred (300) feet.

(3) Open Space: Four (4) acres minimum.

## SECTION 6.7 ENVIRONMENTAL CORRIDOR DISTRICT

### 6.71 Purpose and Intent.

Environmental Corridor District, as mapped or intended to be mapped, includes non-wetland/floodplain primary or secondary environmental corridors as defined herein, and is intended to be used to preserve, protect, enhance, and restore significant woodlands, upland wildlife habitat areas, scenic overlooks, slopes exceeding 12%, and upland wooded areas, while also affording an opportunity to use the site for the limited residential purposes, in concert with the goal and intent of the Regional Land Use Plan or locally adopted plan, which suggests that residential densities in such areas not exceed one unit per five acres for all parcels which lie entirely within the Environmental Corridor. Where questions arise as to the exact location or boundary of an environmental corridor, the extent and location of such corridors shall be finally determined by infield investigation by the Zoning Administrator or his/her designee.

### 6.72 Use Regulations.

(1) Permitted Uses:

(A) Any uses permitted in C-1 Conservancy/Wetland Districts.

(B) Single family dwellings.

(C) Keeping of poultry and domestic livestock, except that the keeping of hogs, male goats or fur bearing animals shall not be permitted on less than twenty (20) acres.

(D) The following accessory buildings and uses, subject to the conditions specified:

- 1. Private garages, when located on the same lot, and not involving the conduct of a business; provided, however, that no private garage shall be erected unless that principal building to which such garage is an

accessory use has been erected or is to be erected simultaneously with said garage.

2. Quarters for household or farm employees; provided, however, that such quarters shall be occupied only by individuals employed full time on the premises and their families.
3. Stables, barns, or poultry houses, provided that no building housing domestic livestock or poultry shall be closer than fifty (50) feet to any lot line.

- (E) A sign in accordance with Section 7.01(1)(I).
- (F) Hobby kennel in accordance with Section 7.01(1)(K).

### **6.73 Building Location.**

- (1) Setback: Fifty (50) feet minimum.
- (2) Offset: Thirty-five (35) feet minimum.
- (3) Shore Setback: Seventy-five (75) feet minimum.

### **6.74 Height Regulations.**

- (1) Principal Building: Thirty-five (35) feet.
- (2) Accessory Building:
  - (A) Farm: Sixty (60) feet minimum.
  - (B) Other: Fifteen (15) feet minimum.

### **6.75 Area Regulations.**

- (1) Floor Area:
  - (A) Minimum required:
    1. First floor: Nine hundred (900) square feet.
    2. Total: Fifteen hundred (1,500) square feet.
- (2) Lot size:
  - (A) Minimum area: the overall density of parcels lying entirely within the Environmental Corridor shall be not less than one dwelling unit per five (5) acres of corridor area, with no lot area being less than two (2) acres in size. On parcels which contain area outside of the environmental corridor or partially within the environmental corridor and in a zoning category requiring less than a five (5) acre lot, the five (5) acre density requirement shall not apply and the lot can be the size required for that adjacent zoning category as long as any earth altering activity and/or building envelopes are

located outside of the corridor area and appropriately restricted as such on the face of the Certified Survey Map, Subdivision Plat or other appropriate matter and recorded in the office of the Register of Deeds. The overall goal of this requirement is to obtain a maximum density of building activity within the environmental corridor of not less than one (1) dwelling unit for each five (5) acres of environmental corridor lands.

- (B) Lands which lie within a larger parcel or tract of land, the remainder of which is zoned either A-P Agricultural Land Preservation District or A-T Agricultural Land Preservation Transition District, shall have a minimum (gross) parcel size of 35 acres.
- (3) Preservation of Open Space:
  - (A) For parcels lying entirely within an Environmental Corridor Zoning District, no open space regulation shall apply. However, all earth altering activities and vegetative removal including building sites and drive areas (area of disturbance) shall be no more than 15% of five (5) acres (32,600 square feet) in the environmental corridor may be disturbed with such land disturbance.
  - (B) For parcels which lie partially within and partially outside of the environmental corridor, the area of disturbance shall be limited to that area outside of the environmental corridor unless otherwise permitted by a building envelope on the certified survey map, subdivision plat or other document.

## SECTION 7. A-I AGRICULTURAL DISTRICT

### 7.01. Use regulations.

- (1) Permitted uses:
  - (A) Any use as permitted in the A-E exclusive agricultural conservancy district.
  - (B) One-family dwellings.
  - (C) [Repealed]
  - (D) General farming on not less than five (5) acres and as regulated in (E) and (G) below.
  - (E) Keeping of poultry and domestic livestock, except that the keeping of hogs, male goats or fur bearing animals shall not be permitted on less than twenty (20) acres.
  - (F) Horticulture.
  - (G) The following accessory buildings and uses, subject to the conditions specified:
    - 1. Private garages, when located on the same lot, and not involving the

conduct of a business; provided, however, that no private garage shall be erected unless that principal building to which such garage is an accessory use has been erected or is to be erected simultaneously with said garage.

2. Quarters for household or farm employees; provided, however, that such quarters shall be occupied only by individuals employed full time on the premises and their families.
3. Private boathouses, provided no living quarters are included in said boathouse. Only one (1) boathouse per lot is permitted.
4. Stables, barns, or poultry houses, provided that no building housing domestic livestock or poultry shall be closer than fifty feet to any lot line.

(H) Home occupations and professional offices as defined in this ordinance, when incident to the residential use and when situated in the same dwelling, subject to the following conditions:

1. No name plate exceeding three (3) square feet in area shall be permitted.
2. Such home occupation or professional office shall not occupy more than twenty (20) percent of the floor area of the principal building.
3. Such home occupation or professional office shall not employ more than one (1) person not a resident on such lot.
4. Adequate off-street parking facilities shall be provided adjacent, or reasonably adjacent to the building which houses such occupation or office.
5. Such permitted use shall not include conduct of any retail or wholesale business on the premises, nor the removal of sand, gravel or stone for commercial purposes.
6. Such permitted use shall not include the use of any machinery, tools, or other appliances which can reasonably be construed as creating an abnormal nuisance to the surrounding property owners.

(I) A sign pertaining to the lease or sale of any building or land provided such sign does not exceed twenty (20) square feet in area. A sign not exceeding six (6) square feet in area may be maintained by the owner or occupant of any land or building for the purpose of displaying the name of the owner or occupant, or for the purpose of warning against trespasses.

- (J) Any planned unit development according to the conditions of section 3.07(7)(Q).
- (K) Hobby kennel accessory to an otherwise permitted use, provided such use has the specific approval of the town plan commission and will not adversely affect the use of adjacent lands as may be determined by findings of the town plan commission. The proposed use of parcels in such a manner shall be made by written notice to land owners within one hundred (100) feet of the subject property and in any case to land owners immediately adjacent and across the street from such use by certified mail from the town plan commission prior to the meeting at which the town plan commission will consider approval of such use. The town plan commission may require such measures or provisions by the applicant as it may deem necessary to provide adequate protection of surrounding property. The town may deny the right to a hobby kennel on the basis of a finding that such a use would be incompatible and a possible nuisance to surrounding uses and not in the public interest. Any person aggrieved by a decision of the plan commission relative to this provision may appeal such decision to the board of adjustment for review and determination as provided for in section 17 of this ordinance.

Where two (2) or fewer dogs are kept, such use shall be considered accessory to the principal use and shall not require special approval by the plan commission. In any case, if the keeping of any number of dogs accessory to the principal use becomes a nuisance to the neighborhood as may be determined by the town plan commission or town board, such use shall be terminated or the nuisance abated. Where necessary, the town plan commission or town board may take appropriate steps to abate such nuisance. (Ord. No. 141-44, §§ XLVIII, XLIX, 7-22-86)

**Editor's note**--Ord. No. 141-44, § XLVIII purported to amend § 7.02(1)(A). It has been treated as an amendment to § 7.01(1)(A) as there is no § 7.02(1)(A), the context clearly applies to § 7.01(1)(A) as § XLIX amends § 7.01.

## **7.02. Building location.**

- (1) Setback: Fifty (50) feet minimum.
- (2) Offset: Twenty (20) feet minimum.
- (3) Shore Setback: Seventy-five (75) feet minimum. Editor's note~See editor's note for § 7.01.

## **7.03. Height regulations.**

- (1) Principal building: Thirty-five (35) feet maximum.
- (2) Accessory buildings:

- (A) Farm: Sixty (60) feet maximum.
- (B) Other: Fifteen (15) feet maximum.

#### **7.04. Area regulations.**

- (1) Floor area:
  - (A) Minimum required:
    - 1. First floor: Nine hundred (900) square feet.
    - 2. Total: One thousand three hundred (1,300) square feet.
  - (B) Maximum F.A.R. permitted: Ten (10) percent.
- (2) Lot size:
  - (A) Minimum area: Three (3) acres.
  - (B) Minimum average width: Two hundred (200) feet.
- (3) Open space: One (1) acre minimum per family.

### **SECTION 8. A-2 RURAL HOME DISTRICT.**

#### **8.01. Use regulations.**

- (1) Permitted uses:
  - \_\_\_\_\_(A): Any use permitted in the A-1 Agricultural District except that the keeping of domestic livestock shall be regulated so that there shall be no more than one (1) head of livestock or twenty (20) fowl per acre for the first three (3) acres of land, and one (1) head of livestock or twenty (20) fowl per one (1) acre of land thereafter.
  - (B) Nurseries and greenhouses for the private and exclusive use of the dwelling occupant are permitted. (Ord. of 11-5-84, § XII)

#### **8.02. Building location.**

- (1) Setback: Fifty (50) feet minimum.
- (2) Offset: Thirty (30) feet minimum.
- (3) Shore setback: Seventy-five (75) feet minimum.

#### **8.03. Height regulations.**



- (1) Principal building: Thirty-five (30) feet
- (2) Accessory buildings: Fifteen (15) feet maximum.

#### **8.04. Area regulations.**

- (1) Floor area:
  - (A) Minimum required:
    - First floor: Nine hundred (900) square feet.
    - Total: One thousand five hundred (1,500) square feet.
  - (B) Maximum F.A.R. permitted: Ten (10) percent.
- (2) Lot size:
  - (A) Minimum area: Three (3) acres.
  - (B) Minimum average width: Two hundred (200) ft.
- (3) Open space: Two-acre minimum per family. (Ord. No. 141-44, §§ L, LI, 7-22-86)

### **SECTION 8a. A-3 SUBURBAN ESTATE DISTRICT**

#### **8.01a. Use regulations.**

- (1) Permitted uses:
  - (A) Any use permitted in the A-2 rural home district except that the keeping of poultry or domestic livestock shall not be permitted on any lot less than three (3) acres and not more than one (1) head of livestock or twenty (20) fowl be kept per acre of land area except under the following conditions:
    - 1. Where such use existed prior to the date of the ordinance, as a principal commercial or agricultural use, such use may be continued subject to the limitations regulating a non-conforming use as regulated by section 3.15.
    - 2. Where such use existed prior to the date of this ordinance as a legal accessory or incidental use to the principal use of the property, such use may be continued only if there is no objection from any owner of property within three hundred (300) feet, the provisions of section 3.15 notwithstanding. Such objections shall be submitted in writing to the town board and a public hearing held thereon.
    - 3. Subject to the limitations established under section 8.01(1)(A), such use may be permitted on any lot provided that there shall first be filed with the town board the written consent of the owners of all property within three hundred

(300) feet and further subject to termination, after public hearing, upon written complaint to the town board, by any owner within three hundred (300) feet of said property. When permitted, the keeping of poultry or domestic livestock shall be done under maximum practical conditions of neatness and sanitation so as not to be detrimental to the surrounding residential use, and all fowl shall be kept confined or enclosed and not permitted to run at large. (Ord. No. 141-44. § LII, 7-22-86)

**8.02a. Building location.**

- (1) Setback: Fifty-foot minimum.
- (2) Offset: Twenty-five-foot minimum.
- (3) Shore Setback: Seventy-five-foot minimum.

**8.03a. Height regulations.**

- (1) Principal building: Thirty-five-foot maximum.
- (2) Accessory building: Fifteen-foot maximum.

**8.04a. Area regulations.**

- (1) Floor area:
  - (A) Minimum required:
    - 1. First floor: Nine hundred (900) square feet.
    - 2. Total: One thousand five hundred (1,500) square feet.
  - (B) Maximum F.A.R. permitted: Ten (10) percent.
- (2) Lot size:
  - (A) Minimum required: Two (2) acres.
  - (B) Minimum average width: One hundred seventy-five (175) feet.
- (3) Open space: Seventy-five thousand (75,000) square foot minimum per family.

**SECTION 8b. A-4 COUNTRY ESTATE DISTRICT**

**8.01b. Use regulations.**

- (1) Permitted uses:
  - (A) Any use permitted in the A-3 suburban estate district. (Ord. No. 141-44. § LIII. 7-22-86)

**8.02b. Building location.**

- (1) Setback: Fifty (50) feet minimum.
- (2) Offset: Thirty (30) feet minimum.
- (3) Shore setback: (75) foot minimum. (Ord. No. 141-44, § LIII, 7-22-86)

**8.03b. Height regulations.**

- (1) Principal building: Thirty-five (35) feet maximum.
- (2) Accessory building: Fifteen (15) feet maximum.

**8.04b. Area Regulations.**

- (1) Floor Area: (A) Minimum req'd: First Floor: Nine hundred (900) square ft.  
Total: One thousand five hundred (1,500) square feet.  
(B) Maximum F.A.R. permitted: Ten (10) percent
- (2) Lot Size: (A) Minimum area: One and one-half (1 1/2) acres  
(B) Minimum average width: Two hundred (200) feet
- (3) Open Space: One (1) acre minimum per family (Ord. No. 141-44, § LIII, 7-22-86)

**SECTION 8C. RRD-5 RURAL RESIDENTIAL DENSITY DISTRICT 5**

**8.01c. General Regulations.**

**(A) Purpose and Intent.**

The purpose of this zoning district is to allow the development of land at densities not greater than one (1) unit for each five (5) acres on all non-prime agricultural areas, in order to encourage the preservation of Prime Agricultural tillable land, (U.S.D.A. Class I and II soils) to discourage residential development on environmentally sensitive areas, provide some marketability for such lands, and to encourage a more economical use of land which is suited to residential development by permitting more intensive use of such lands without changing the overall rural character of the town and the population density of the town as set forth in the adopted Land Use Plan. Further, only 20% of the lands in the C-1 Conservancy/Wetland, or A-E Exclusive Agricultural Conservancy zoning districts may be used when calculating the allowable living units.

This district encourages the transfer of residential development rights from one area of a parcel to another, and from one tract of land to another, thereby increasing the density of development in exchange for establishing the preservation of other lands as "agricultural preserved lands".

- (1) Development Goals: The stated intent of the density regulations where preserved

lands will be established can be implemented in the following manner:

- a. Development would occur at five (5) acre densities with the buildable parcels having the building site outside of the prime agricultural tillable area and the open area (transferring lands) would be retained through a deed restriction or covenants with no development rights until such time as it could be served with municipal sewer and a zoning change is approved by the Town and County Boards, in accordance with the adopted local Land Use Plan.
- b. All lot owners would own an undividable interest in the large open space area with development rights transferred and only to be developed at such time as sewer is available and a zoning change is approved by the Town and County Boards in accordance with the adopted local Land Use Plan.
- c. The land owner or his heirs and assign who sold the development rights could retain those lands with the original farmstead; however, no development rights of that parcel beyond those available under this provision would be allowed to be transferred until such time as sewer became available and rezoning of the parcel is approved by the Town and County Board in accordance with the adopted Local Land Use Plan.

- (2) Preservation of Rural Character: A basic goal of this density transfer technique is to promote the preservation of the rural character of the town by encouraging farm fields, pastures and orchards and natural open spaces to be retained, either as common open spaces or as part of a farm operation under the "preserved land" category.
- (3) Preservation of Agricultural Lands: The shape and arrangement of preserved lands designated for agricultural use should be consistent with practical requirements for an agricultural activity and be of justifiable value for farm use or as a contribution to the goal of preserving the rural environmental character. The preserved areas must be at least twenty (20) acres of contiguous area, not necessarily on the same parcel, and consist of U.S.D.A. Class I and II soils for prime agricultural use, and be tillable without the necessity of removing mature vegetation.
- (4) Relationship of Development to Agricultural Area: Consideration shall be given as to whether the development plans for roads, building sites and preserved agricultural areas is based upon the careful consideration of the most appropriate relationship to the existing terrain conditions, suitable capacity for onsite sewage disposal systems, provisions for storm water drainage and retention, the potential impact upon surrounding areas, the size, location and the agricultural viability of the agricultural lands being preserved.
- (5) Access To Town and County Roads: In order to preserve the rural character, as well as the efficiency and safety of existing road systems, it will be required to minimize

the development of lots strung out along such roads with individual driveway accesses from each lot. One goal of density control is to encourage the grouping of lots on interior streets which will access the existing road system.

**(B) Principles and Guidelines.**

- (1) The portion of a tract of land from which development rights are transferred is hereby termed the "transferring land", and the tract to which the additional dwelling unit development potential is added is termed the "receiving land".
- (2) The transfer of development rights may only take place between RRD-5, the AD-10, A-E Exclusive Agricultural Conservancy and C-1 Conservancy/Wetland Zoning Districts except that only a maximum of 20% of the transferring land zoned C-1 Conservancy/Wetland or A-E Exclusive Agricultural Conservancy may be counted towards the overall density to be provided for the receiving land. Where more than 50% of the site is zoned in the C-1 or A-E category, only that amount of acreage up to the 50% amount may be used in the above calculations for density purposes.
- (3) For the purpose of transferring residential development rights, the petitioner shall provide documentation at the time of submittal of the preliminary plat indicating that he is an owner of the subject property or has the authority under the terms of a written contract (Offer to Purchase) to make commitments on the transferring land.
- (4) In addition to requiring an appropriate open space or an agricultural easement on the transferring lands in favor of the town and/or county, covenants shall be placed in the title of each dwelling unit, giving the owner enforceable rights to prevent the future development of the transferring lands until such time as sewer is available and the subject property is rezoned to allow additional development.
- (5) This zoning category is designed to control the intensity of use in relationship to the natural, physical and ecological characteristics of the land, to implement the local Land Use Plans, allow development where soils can accommodate sewage disposal systems, discourage intense development where there is an inability to provide appropriate municipal services, basic economic factors and achievement of the desirable residential and environmental character and preservation of prime agricultural tillable areas consisting of U.S.D.A. Class I and II soils on a minimum of twenty (20) acres of contiguous area. To achieve the optimum residential environment in a rural character for the town, the density technique is designed to permit variable lot sizes in the utilization of the most desirable terrain for housing sites while encouraging the preservation of prime agricultural tillable lands and lands worthy of such preservation.
- (6) The density factor is expressed in terms of the amount of gross land area required for each dwelling unit. Such gross area includes the area of the lots and any other lands preserved in agricultural use where those areas are termed "preserved lands". The minimum lot size is expressed in terms of minimum area, and average width for the

actual privately owned lot intended as the home site.

- (7) No building intended in whole or part for residential use shall be erected or relocated unless the lot on which it is located meets the required density factor or has allocated to it through the transfer program, sufficient additional preserved lands to meet the required density factor for the district in which it is located. Where "transferred lands" are to be established, no more than 20% of the total for computation may be in the C-1 Wetland/Conservancy or A-E Exclusive Agricultural Conservancy zoning districts and in accordance with Section 6.51 (B)(2) of this ordinance. Where the total area (or the pro-rated factor) involved includes more than one zoning district, the overall density factor shall apply. In any such case involving the establishment of "preserved lands" approval by the Plan Commission and the Waukesha County Zoning Agency shall be required, pursuant to the criteria and development goals set forth herein.
- (8) Any land claimed in addition to the actual described residential lots for credit toward meeting the density factor requirement shall have its status permanently established and guaranteed either by dedication to the public or by appropriate covenants running with the lands in conveyance of agricultural easements, such covenants and easements shall restrict the property against any development or use, except as is consistent with its preservation as agricultural land, or as a form of common open space, unless sewer becomes available and the zoning of the property is changed in accordance with the adopted local Land Use Plan. The preserved land status of any parcel shall be indicated on the official zoning map.

### **C. Use Regulations.**

#### **(1) Permitted Uses:**

- (a) Single-family uses and not more than one two-family residential dwelling (duplex) pursuant to issuance of a conditional use permit under Section 3.07(7)(O).
- (b) Ordinary farm uses, including dairy and livestock, poultry raising, raising of crops, and truck farming or parcels having a minimum of five (5) acres.
- (c) Accessory uses and buildings normally associated with an agricultural operation, including garages, stables and poultry houses. Buildings used for housing of animals shall maintain a minimum offset of fifty (50) feet from all adjacent lot lines.
- (d) Signs:
  - 1. Signs not to exceed twelve (12) square feet in area, displaying the name of the farm or farm organization.
  - 2. Subdivision signs, in accordance with the sign provisions of the Ordinance.

- (e) Wholesale nurseries, greenhouses and hatcheries.
- (f) Roadside stands; subject to the following:
  - 1. Offstreet parking for a minimum of four (4) vehicles shall be provided.
  - 2. No such stand shall be closer than thirty (30) feet to the base setback line, or closer than twenty (20) feet to any lot line.
- (g) Home occupation and professional offices, as regulated in Section 7.01(H).
- (h) Hobby kennels, as regulated in Section 7.01(K).

#### **8.02c Building Location.**

- (1) Setback: Fifty (50) feet minimum.
- (2) Offset: Twenty (20) feet minimum.

#### **8.03c Height Regulations.**

- (1) Principal structure: Thirty-five (35) feet maximum.
- (2) Accessory buildings:
  - a. Farm Building: Sixty (60) feet maximum.
  - b. Other Accessory Building: Fifteen (15) feet maximum.

#### **8.04c Area Regulations.**

- (1) Floor area:
  - a. Minimum required first floor: Nine hundred (900) square feet. Total one-family: Fifteen hundred (1,500) square feet.
  - b. Two-family minimum required first floor: Seven hundred and fifty (750) square feet. Total per family: Fourteen hundred (1,400) square feet.
  - c. Maximum floor area ratio: 15%.
- (2) Lot size:
  - a. Minimum: One (1) acre.
  - b. Minimum average width: One hundred and fifty (150) feet.
- (3) Open space: Thirty thousand (30,000) square feet.
- (4) Density Division Standard:
  - a. For parcels less than twenty (20) acres in size, the property must be

developed in accordance with one of the two following methods:

1. The land may be divided into parcels with five (5) acre minimum lot sizes only if the parcel contains no prime tillable land or the prime farm land on the subject parcel is not contiguous to other prime farm land on an adjacent parcel which would meet the twenty (20) acre minimum size.
  2. The land may be developed at a five (5) acre overall density, as long as no more than one (1) living unit for each five (5) acres would be allowed and the prime tillable area is preserved where it is contiguous to an adjacent parcel where the prime agricultural area is a minimum size of at least twenty (20) acres.
- b. Parcels greater than twenty (20) acres in size must conform to the following standards:
1. They must be developed at no more than a five (5) acre density, taking into account only 20% of any C-1 Conservancy/Wetland and A-E Exclusive Agricultural Conservancy where more than 50% of the site is zoned C-1 or A-E, only the amount of acreage up to the 50% amount may be used in the calculation of allowable density.
  2. Residential development would be allowed only on non-prime agricultural soils (U.S.D.A. Class III and below) which are tillable
  3. All farm fields which must be preserved, are those areas which are a minimum of twenty (20) acres in contiguous area and consist of U.S.D.A. Class I and II prime agricultural soil and are tillable. The twenty (20) acre minimum area may be on the subject parcel or contiguous to prime agricultural areas on an adjacent parcel.

## **SECTION 9. R-1 RESIDENTIAL DISTRICT**

### **9.01. Use regulations.**

#### **(1) Permitted uses:**

- (A) Any use as permitted in the rural home district, except that the keeping of poultry or domestic livestock shall not be permitted on any lot less than three (3) acres in area except under the following conditions:
1. Where such use existed prior to the date of this ordinance, as a principal commercial or agricultural use, such use may be continued subject to the limitations regulating a nonconforming use as regulated by section 3.15.



2. Where such use existed prior to the date of this ordinance as a legal accessory or incidental use to the principal use of property, such use may be continued only if there is no objection from any owner of property within three hundred (300) feet, the provisions of section 3.15 notwithstanding. Such objections shall be submitted in writing to the town board and a public hearing held thereon.
  3. Subject to the limitations established under section 8.01(1) (A), such use may be permitted on any lot provided that there shall first be filed with the town board the written consent of the owners of all property within three hundred (300) feet and further subject to termination, after public hearing, upon written complaint to the town board, by any owner within three hundred (300) feet of said property. When permitted, the keeping of poultry or domestic livestock shall be done under maximum practical conditions of neatness and sanitation so as to not be detrimental to the surrounding residential use, and all fowl shall be kept confined or enclosed and not permitted to run at large.
- (B) The keeping of usual household pets and hobby kennels but not including the operation of a commercial kennel unless a conditional use permit is obtained.

#### **9.02. Building location.**

- (1) Setback: Fifty (50) feet minimum.
- (2) Offset: Twenty (20) feet minimum.
- (3) Shore setback: Seventy-five (75) feet minimum.

#### **9.03. Height regulations.**

- (1) Principal building: Thirty-five (35) feet maximum.
- (2) Accessory buildings: Fifteen (15) feet maximum.

#### **9.04. Area regulations.**

- (1) Floor area:
  - (A) Minimum required:
    1. First floor: Nine hundred (900) square feet.
    2. Total: One thousand three hundred (1,300) square feet.
  - (B) Maximum F.A.R. permitted: Fifteen (15) percent.
- (2) Lot size:
  - (A) Minimum area: One (1) acre.
  - (B) Minimum average width: One hundred fifty (150) feet.

(3) Open space: Thirty thousand (30,000) square feet minimum per family. (Ord No. 141-44, § LIV, 7-22-86)

## **SECTION 10. R-2 RESIDENTIAL DISTRICT**

### **10.01. Use regulations.**

(1) Permitted uses:

(A) Any use as permitted in the R-1 residential district.

### **10.02. Building location.**

- (1) Setback: Fifty (50) feet minimum.
- (2) Offset: Twenty (20) feet minimum.
- (3) Shore setback: Seventy-five (75) feet minimum.

### **10.03. Height regulations.**

- (1) Principal building: Thirty-five (35) feet maximum.
- (2) Accessory buildings: Fifteen (15) feet maximum.

### **10.04. Area regulations.**

(1) Floor area:

(A) Minimum required:

- 1. First floor: Nine hundred (900) square feet.
- 2. Total: One thousand one hundred (1,100) square feet.

(B) Maximum F.A.R. permitted: Fifteen (15) percent.

(2) Lot size:

- (A) Minimum area: Thirty thousand (30,000) square feet.
- (B) Minimum average width: One hundred twenty (120) feet.

(3) Open space: Twenty-five thousand (25,000) square feet minimum per family.

## **SECTION 11. R-3 RESIDENTIAL DISTRICT**

### **11.01. Use regulations.**

#### **(1) Permitted uses:**

- (A) Any use as permitted in the R-2 residential district.

### **11.02. Building location.**

- (1) Setback: Fifty (50) feet minimum.
- (2) Offset: Twenty (20) feet minimum.
- (3) Shore setback: Seventy-five (75) feet minimum.

### **11.03. Height regulations.**

- (1) Principal building: Thirty-five (35) feet maximum.
- (2) Accessory buildings: Fifteen (15) feet maximum.

### **11.04. Area regulations.**

#### **(1) Floor area:**

##### **(A) Minimum required:**

- 1. First floor: Eight hundred fifty (850) square feet.
- 2. Total: One thousand one hundred (1,100) square feet.

##### **(B) Maximum F.A.R. permitted:** Fifteen (15) percent.

#### **(2) Lot size:**

- (A) Minimum area: Twenty thousand (20,000) square feet.
- (B) Minimum average width: One hundred twenty (120) feet.

#### **(3) Open space:** Fifteen thousand (15,000) square feet minimum per family.

**SECTION 11a. EXISTING FLOODPLAIN DEVELOPMENT OVERLAY DISTRICT****11.01a. Purpose and intent.**

The purpose and intent of this district is to provide for the continued use of improved properties that lie within the floodplain and which are considered prohibited structures in section 3.04 (6)(A). With the preparation of new floodplain data where such information was previously not available for many reaches of the various waterways in Waukesha County, it is becoming more apparent that small concentrations of development lie within the floodplains which may not have been previously recognized as floodplain. Accordingly, it is recognized that these improvements represent the substance of many families' estates and principal residences. Therefore, the intent of this section is to recognize existing uses and structures and regulate them in accordance with sound floodplain management practices while protecting the overall water quality of the river system.

It is further the intent of these provisions to regulate and diminish the proliferation of non-conforming structures and uses in floodplain areas and to regulate said reconstruction, remodeling, conversion and repair with the overall intent of lessening the public responsibilities attendant to the continued and expanded development of land and structures which are inherently incompatible with natural floodplains and to lessen the potential danger to life, safety, health and welfare of persons whose lands are subject to the hazards of floods.

The provisions for this overlay district shall apply to all floodplains where specifically mapped and where structures are in existence as of the date of this provision (date of adoption December 17, 1981) based upon available flood data. As more detailed hydrologic and flood data becomes available and floodways and floodplains are more definitively identified, such portions of land areas where structures exist may be placed into this overlay district subject to the amendment procedures as set forth in section 18 of this ordinance.

The degree of flood protection intended to be provided by this ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside the 100-year recurrence interval floodplain or land uses permitted within such areas will always be totally free from flooding or flood damages, nor shall this ordinance create a liability on the part of or a cause of action against the County of Waukesha or any officer or employee thereof for any flood damage that may result from reliance on this ordinance.

**11.02a. Use regulations.****(1) Permitted uses:**

- (A) Any use as permitted in the C-1 conservancy district or the A-E exclusive agricultural district.

(B) Structures and uses, including principal as well as accessory uses and structures existing at the time of adoption of this provision, subject to compliance with the following:

1. In the event of the damage, including fire, wind or other natural causes, to any such existing structures, the valuation of which to repair such damage would exceed 50% of its current fair market value (as computed over the life of the structure and including past improvements) said structure may be reconstructed, remodeled or rebuilt if the following standards are met:

(a) The structure is not located in a floodway as defined herein.

(b) The first floor of the structure shall be placed at or above the flood protection elevation and reconstruction may occur on the same foundation or newly constructed foundation which represents no greater an encroachment or extension of the previously existing structure other than vertically. Said foundation shall be floodproofed and certified as set forth herein. Fill shall be used to elevate the first floor so as to meet the above. The fill shall not be less than one (1) foot below the flood protection elevation for the particular area and the fill shall extend at such elevation at least fifteen (15) feet beyond the limits of the structure. Where such distance cannot be achieved because of lot lines or other similar constraints, said fill elevation shall extend as far as is practicable resulting in no slope conditions at its terminus which may adversely affect surface water drainage on adjacent properties. In addition, where the fifteen (15) feet of fill cannot be achieved as set forth above, the structures shall be floodproofed to the flood protection elevation in accordance with the methods set forth herein and shall be certified as such by an architect or professional engineer registered in the State of Wisconsin. Other methods may be used, as long as they are certified as set forth above, which are designed to the flood protection elevation for the particular area in question. All floodproofing measures shall at a minimum provide anchorage to resist flotation and lateral movement, and shall insure that the structural walls and floors are watertight. In order to insure that adequate measures are taken, the applicant shall submit a plan or document certified, as above, that the floodproofing measures are adequately designed to protect the property to the flood protection elevation for the subject area. **(Cross reference-Flood protection elevation defined, § 2.02(21a))**

(c) There shall be dry land access to all structures affected by these regulations, dry land access to be considered contiguous lands outside or above the floodplain elevation where the depth and duration of flood waters do not adversely affect rescue and relief operations during flood. Normally inundations of not more than one (1) foot of water above the roadways is considered adequate to meet the intent of this requirement.

- (d) All onsite waste disposal systems and private wells shall be floodproofed to the flood protection elevation and shall conform with the provisions of the Waukesha County Sanitary Code and/or Wisconsin Administrative Codes where applicable to such facilities. **(Cross reference-Community health code, App. E.)**
  - (e) The basement or crawl space shall be at or above the floodplain elevation unless a community wide exemption allowing floodproofing of basements has been granted by the federal insurance administration (FIA) of the federal emergency management administration (FEMA). Heating and electrical equipment shall be at or above the flood protection elevation.
  - (f) A structure may be reconstructed or rebuilt which has less than the minimum floor area and open space requirements set forth in the R-3 residential district. If a larger floor area than previously existed is desired or the previous floor area ratio exceeded the R-3 residential district requirements, reconstruction or enlargement (vertically only) may not exceed the floor area ratio requirements set forth in the R-3 residential district. Offset and setback requirements of the R-3 district shall apply.
  - (g) Where more than one (1) principal building, as defined in section 2.02(7) of this ordinance, exists on a single property and one (1) or more of said buildings would be destroyed or damaged beyond fifty (50) percent of their current fair market value as heretofore set forth, the reconstruction, rebuilding or repair of only one (1) of such buildings would be allowed. Where only one (1) principal building on a property exists, is destroyed or damaged as set forth above, the reconstruction or repair of that building would not be allowed unless all other principal buildings were removed. The intent of this provision is to allow for the reasonable use of the developed floodplain lands but not to the degree of intensity which may have existed prior and so that the intensity of use of floodplain lands will be diminished.
2. Where a structure lies within the floodplain but outside of the floodway, no modification or addition to such structure shall be permitted unless it conforms with the following standards: (For the purpose of this section, the words "modification" and "addition" shall include, but not be limited to, any structural alteration, addition, modification, rebuilding or lateral enlargement of any such existing structure, principal or accessory. Modification shall also refer to the conversion of various living spaces or other floor areas into space for living purposes such as converting a part of a living room into a bedroom or bathroom regardless of whether such changes require structural alteration to the basic structures. Ordinary maintenance repairs, including painting, decorating, paneling, replacement of doors, windows and other non structural

components, shall not be subject to these provisions.)

- (a) The modification or addition to a structure may not decrease floodwater conveyance or storage capacities. Said modification or addition to a structure shall not extend laterally from the structure so as to extend into the floodplain but may be allowed to go above existing floors of the structure. A carport accessory to the existing principal use, may be permitted on existing grades, which does not decrease the flood storage or conveyance capacity of the floodplain as long as it is not enclosed on its sides. It shall, however, meet all other offset, setback, and floor area ratio requirements. A garage, boathouse and accessory structure may be permitted accessory to the existing principal use. When a garage is attached, the floor shall be at or above the flood protection elevation and when detached shall be at least one (1) foot above the floodplain elevation defined herein and in all other respects shall meet the fill requirements set forth in section 3.04 (6) (A) 1d, locational and floor area ratio criteria of this ordinance.
- (b) Floor area ratio requirements of the R-3 residential district may not be exceeded although minimum floor area requirements are not required to be met. Minimum offsets and setbacks shall be required to be met.
- (c) The provisions of subsection 11.02a(1)(B)1(b), (c), (e) and (f), shall be complied with. Only 1 principal structure on a lot will be allowed to be modified or altered in accordance with the intent of subsection (g) above.
- (d) The provisions of subsection 11.02a(1)(B)1(d) shall be complied with. Where a modification or addition requires a larger waste disposal system than what exists (ie, additional bedrooms), it shall be demonstrated to the zoning administrator that a new or expanded waste disposal system can be provided and a county sanitary permit granted, meeting the requirements of the Waukesha County Sanitary Code and the Wisconsin Administrative Code, where applicable, prior to the issuance of a zoning and building permit for such alterations to the structure. Such new, improved or enlarged waste disposal system shall be required to be installed concurrently with the construction or prior to occupancy of the altered structure. (**Cross reference**--Community health code, App. E. )

The intent of this provision is to allow only those additions and modifications which can be accommodated with an onsite waste disposal system which will comply with contemporary standards for waste disposal and which will result in improved systems which will be adequately protected from flooding and which will accommodate said structures and their improvements.

- 3. Conversion of residences from seasonal use to year round use will not be

allowed unless all of the conditions set forth in [section] 11.02a(1)(B)2 above are met. Conversions of this nature will require a zoning permit and inspection to determine conformance with the above cited subsection.

4. The provisions set forth above and related to reconstruction, modification, remodeling and additions, shall conform with all other requirements and provisions of this ordinance, except as may be allowed to be modified as set forth in section 11a of this ordinance.
5. Lateral extension of buildings or other exceptions which may be prohibited above may be allowed only with approval by the Waukesha County Board of Adjustment in accordance with the procedures established in section 17 of this ordinance. The board of adjustment in granting said extension shall determine whether the spirit and intent of the ordinance will be upheld by granting said variances from the provisions regulating the continued or intensified use of lands which are located in floodplains and whether the public health, safety and welfare will be in any way jeopardized through the granting of said variances.
6. In the administration of the above standards, it is required that various standards set forth above shall be subject to review and approval by the county zoning agency upon submittal of appropriate data and information necessary to determine compliance with the above regulations. (Ord. No. 141-44, § LV, 7-22-86)

## **SECTION 12. P-I PUBLIC AND INSTITUTIONAL DISTRICT**

### **12.01. Intent of District.**

This district is intended to provide for those uses which serve a public need and are principally of an institutional, educational, medical, or governmental nature (whether public or privately owned and either "for profit" or "not for profit") and serving a public need, (but not including the operation of a bar, restaurant, or recreational facility as a commercial enterprise) unless authorized as a Conditional Use under Section 3.07(7)(R) and (U). Group homes as regulated by Statute, shall not be included as they are either allowed in other districts or regulated pursuant to Section 3.07.

### **12.02. Permitted Uses.**

The following uses are permitted by right subject to review and approval of the site plan and plan of operation by the Planning Commission and County Zoning Administrator:

1. Hospitals and clinics or rehabilitation facilities or centers.
2. Nursing home.
3. Schools.



4. Mental health or substance abuse treatment, training, or counseling or rehabilitation facilities.
5. Residential treatment, training or education facilities.
6. Municipal buildings.
7. Museums.
8. Police and fire stations.
9. Libraries.
10. Penal reform institutions.
11. Military installations.
12. Public service yards.
13. Publicly owned and operated parks, recreational uses, golf courses, and open space uses.
14. Other similar uses as determined by the County Zoning Administrator and Plan Commission.

#### **12.03. Permitted Accessory Uses.**

1. Garages and buildings for storage of vehicles and/or equipment, which is used in conjunction with the operation of a permitted use.
2. Residential quarters used for other than a permitted use under Section 12.02 shall be occupied only by individuals employed full- time on the premises and their families.
3. Stables, barns, or poultry houses provided that no building which houses said livestock or poultry is closer than one hundred (100) feet to any lot line.
4. Horticulture, including greenhouses and nurseries and to the extent associated with an otherwise permitted use, retail fruit and vegetable stands.
5. Signs displaying the name of the institution or facility provided they are no greater than fifty (50) square feet in area.
6. Parking in accordance with Section 3.11.
7. Satellite dishes or other communication equipment apparatus.
8. Temporary Uses: Lands and buildings within the district may be used on a temporary basis for private and commercial uses usually not more than one (1) week in duration. Such uses might consist of carnivals, rental of said buildings for private gatherings, use of buildings for temporary commercial displays or trade fairs and similar functions for the purpose of fundraising or other special and unique events in conjunction with the permitted use. Approval must be granted by the Town Board and the Waukesha County Zoning Agency for such temporary use and subject to any condition that may be imposed.

#### **12.04. Building Location.**

1. Setbacks: Fifty (50) feet minimum.
2. Shore setback: Seventy-five (75) feet minimum.
3. Conservancy District Setback: Seventy-five (75) feet minimum.
4. Offset: Fifty (50) feet minimum.

#### **12.05. Height Regulations.**

1. Principal Buildings: Thirty-five (35) foot maximum, unless fire and emergency apparatus adequate to service a taller building is available to service the building on the subject parcel and verification of such apparatus' availability from the community providing fire and emergency services to or for the subject parcel is filed with the Town Building Inspector and the County Zoning Administrator prior to issuance of a zoning permit, in which event the maximum height of a principal building in the subject parcel shall be the maximum height which such available apparatus can service (but such maximum height shall not be greater than sixty (60) feet).
2. Farm Buildings: Sixty (60) feet maximum.
3. Other: Fifteen (15) feet maximum.

#### **12.06. Area Regulations.**

No minimum required. The use will dictate the size of the parcel. However, no more than 60% of the subject parcel shall be of impervious surfaces, consisting of roof tops, paved or gravel surface parking or service areas, and 40% of the subject parcel shall be in vegetative cover or tillable soil.

### **SECTION 13. B-1 RESTRICTED BUSINESS DISTRICT**

#### **13.01. Use regulations.**

##### **(1) Permitted uses:**

- (A) Any use as permitted in the R-3 residential district.
- (B) The following retail or customer service establishments of a restrictive nature provided the location, building and site plan and plan of operation have been

submitted to, and approved by, the plan commission as being in keeping with the character of the surrounding residential area:

1. Boarding or lodging houses, where lodging is offered for compensation, with or without meals to three (3) or more persons for definite periods of one (1) month or less.
2. Delicatessen.
3. Florist shop.
4. Funeral home.
5. Gift shop.
6. Interior decorator.
7. Professional office or studio.
8. Tea room or restaurant provided no liquor is served.
9. Tourist home.
10. Any similar use subject to the approval of the plan commission and county zoning agency.

(C) Signs subject to the following:

1. No sign shall exceed twenty (20) square feet in area.
2. No free standing signs shall exceed ten (10) feet in height from the ground.
3. Only one (1) sign shall be permitted for any such permitted use.
4. No sign shall include illuminating devices or be constructed of illuminated material or be specifically illuminated except by properly shielded cove or back lighting of a nonintermittent type on an opaque background, such source of light not to be more than two (2) feet from the vertical face to be illuminated.

**13.02. Building location.**

- (1) Setback: Fifty (50) feet minimum.
- (2) Offset: Twenty (20) feet minimum
- (3) Shore setback: Seventy-five (75) feet minimum.

**13.03. Height regulations.**

- (1) Principal building: Thirty-five (35) feet maximum.
- (2) Accessory buildings: Fifteen (15) feet max

**13.04. Area regulations.**

(1) Floor area:

(A) Minimum required for residential purposes:

1. First floor: Nine hundred (900) square feet.
2. Total: One thousand (1,000) square feet.

(B) Maximum F.A.R permitted: Twenty (20) percent.

(2) Lot size:

(A) Minimum area: Thirty thousand (30,000) square feet.

(B) Minimum average width: One hundred twenty (120) feet.

(3) Open space: Twenty-four thousand (24,000) square feet minimum per family.

**SECTION 14. B-2 LOCAL BUSINESS DISTRICT**

**14.01. Use regulations.**

(1) Permitted uses:

(A) Any use permitted in the B-1 restricted business district.

(B) Any of the following retail and customer service establishments, provided the location, building and site plans and plan of operation have been submitted to and approved by the plan commission and the county zoning agency:

1. Art shop.
2. Appliance store.
3. Bakery (not over ten (10) employees).
4. Barber shop.
5. Beauty shop.
6. Bank or savings and loan office.
7. Clinic.
8. Clothing or drygoods store.
9. Confectionery store.
10. Drug store.
11. Furniture store.
12. Book or stationery store.
13. Fruit and vegetable market.
14. Grocery or other food products store.
15. Hardware store.
16. Ice cream store.

17. Jewelry store.
18. Meat and fish market.
19. Music and radio store.
20. News-stand.
21. Notion or variety shop.
22. Parking lot.
23. Pharmacy.
24. Radio and television sales and repair shop.
25. Photographer.
26. Shoe store.
27. Soda fountain.
28. Tailor or dressmaking shop.
29. Telegraph and telephone office and telephone exchange.
30. Utility company office.
31. Any similar use subject to the approval of the plan commission and county zoning agency.

(C) Garages for storage of vehicles used in conjunction with the operation of the business.

(D) Signs, subject to the following conditions:

1. No sign shall exceed forty (40) square feet in area.
2. Illuminated signs shall not exceed twenty (20) square feet.
3. Signs shall be limited to one (1) sign per store side of building.
4. No free standing sign shall exceed twenty (20) feet in height from the ground and no attached sign shall be higher than four (4) feet above the top of the roof line or in any case exceed thirty-five (35) feet in height.

#### **14.02. Building location.**

(1) Setback: Fifty (50) feet minimum.

(2) Offset:

(A) Buildings used solely for commercial purposes: Ten (10) feet minimum.

(B) Buildings used in whole or part for residential purposes: Twenty (20) feet minimum.

(3) Shore setback: Seventy-five (75) feet minimum.

#### **14.03. Height regulations.**

(1) Principal building: Thirty-five (35) feet maximum.

(2) Accessory buildings: Fifteen (15) feet maximum.

**14.04. Area regulations.**

(1) Floor area:

(A) Minimum required for residence purposes:

1. Buildings used solely for residence purposes: Nine (900) square feet per family.

(B) Maximum F.A.R permitted: Fifty (50) percent.

(2) Lot size:

(A) Minimum area: Thirty thousand (30,000) square feet.

(B) Minimum average width: One hundred twenty (120) feet.

(3) Open space: Fifteen thousand (15,000) square feet minimum per family.

**SECTION 15. B-3 GENERAL BUSINESS DISTRICT**

**15.01. Use regulations.**

(1) Permitted uses:

- (A) Any use as permitted in the B-2 local business district, except that residential use shall be permitted only in conjunction with or accessory to an otherwise permitted use.
- (B) The following business and trades of a more general nature, normally serving a larger trade area providing the location, building and site plan and plan of operation have been submitted to and approved by the plan commission and the county zoning agency:
  1. Wholesalers and distributors.
  2. Theaters, dance halls, arcades, video game parlors and other amusement places.
  3. Used car lots.
  4. Dry cleaning and dyeing establishments.
  5. New and used automobile sales rooms and lots, sale of snowmobiles, personal watercraft, boats and marine equipment along with repair and service shops for such equipment, storage yards and garages for said equipment, vehicles and supplies, and contractors yards, but not including the storage and/or sale of junked or wrecked equipment or parts.
  6. Printing and publishing houses.
  7. Dairies and bottling plants.

8. Hotels, subject to the provisions of section 3.07(7)(N).
9. Laundries.
10. Lockers and cold storage plants.
11. Any similar use subject to the approval of the plan commission and the county zoning agency.

(C) Signs, billboards and similar advertising media.

#### **15.02. Building location.**

- (1) Setback: Fifty (50) feet minimum.
- (2) Offset:
  - (A) Buildings used solely for commercial purposes: Ten (10) feet minimum.
  - (B) Buildings used in whole or part for residence purposes: Twenty (20) feet minimum.
- (3) Shore setback: Seventy-five (75) feet minimum.

#### **15.03. Height regulations.**

- (1) Principal building: Thirty five (35) feet
- (2) Accessory buildings: Fifteen (15) feet maximum.

#### **Sec. 15.04. Area regulations.**

- (1) Floor area:
  - (A) Minimum required for residence purposes: Nine hundred (900) square feet per family.
  - (B) Maximum F.A.R. permitted: Fifty (50) percent.
- (2) Lot size:
  - (A) Minimum area: Thirty thousand (30,000) square feet.
  - (B) Minimum average width: One hundred twenty (120) feet.
- (3) Open space: Fifteen thousand (15,000) square feet minimum per family.

### **SECTION 15.1 B-4 COMMUNITY BUSINESS DISTRICT**

#### **15.11 Statement of Intent.**

This District is intended to provide for individual or large groups of retail and customer service retail in a "shopping center setting". The intent is to designate those uses on a predetermined land use plan. This District must be located within one (1) mile of a major highway interchange or at or near the intersection of two (2) major highways. The District is designed for convenience or one-stop shopping and is intended to service the entire community.

### **15.12 Review Process.**

The Town Plan Commission and Waukesha County Park and Planning Department staff must review and approve building, site and operational plans of each building proposal or change in use in order to achieve a satisfactory relationship between the permitted use, its operating characteristics, the arterial highway system, and adjacent uses. In the case of a dispute with the staff or the Town Plan Commission regarding the review, the matter may be appealed to the Waukesha County Park and Planning Commission.

### **15.13 Permitted Principle Uses.**

- A. Permitted Principle Uses: The following retail establishments, selling of and storing of only new merchandise.
- (1) Art, dance, music teaching studios or other similar uses.
  - (2) Architects, engineers or other professional offices.
  - (3) Bakery goods, stores.
  - (4) Banks, savings and loan association and other financial institutions.
  - (5) Barber and beauty shops.
  - (6) Candy, confectionery stores.
  - (7) Clothing stores.
  - (8) Delicatessens.
  - (9) Dentist, physician or other similar professional health offices.
  - (10) Drugstores.
  - (11) Dry cleaning pick-up and delivery establishments.
  - (12) Retail florists.
  - (13) Fruit stores.
  - (14) General public book stores.
  - (15) Gift stores.
  - (16) Grocery stores.
  - (17) Hardware stores, paint or decorating stores.
  - (18) Hobby shops.
  - (19) Meat, fish, or poultry markets.
  - (20) Optical stores.
  - (21) Packaged beverage stores.
  - (22) Photo and film pick-up stores.



- (23) Shoe repair shops.
- (24) Shoe stores.
- (25) Soda and ice cream stores.
- (26) Sporting goods stores.
- (27) Tobacco stores.
- (28) Variety stores.
- (29) Vegetable stores.
- (30) Video stores.
- (31) Department stores.
- (32) Cafes or restaurants.

B. Permitted Accessory Uses:

- (1) Garages for storage of licensed vehicles used in conjunction with the operation of a business.
- (2) Offstreet parking and loading areas.

C. Off-street Parking and Loading Areas: Provided detailed site plans, including landscaping and buffering, are submitted to and approved by the Town Plan Commission. Front, rear and side yard paved setbacks shall not be less than ten (10) feet. Shared drives and shared parking areas may be allowed among adjacent properties where appropriate and practical through the use of cross-easements or other internal linkages between the properties with approval of the Town Plan Commission and Waukesha County Park and Planning Department staff.

D. Signs: Allowed by conditional use to evaluate size, orientation and compatibility with the entire site. Landscape and site plans for the signs must be submitted to, reviewed and approved by the Town Plan Commission and Waukesha County Park and Planning Department staff.

#### 15.14 Permitted Conditional Uses.

- 1. Any use similar in character to the permitted uses listed above conducted as a retail business on the premises, catering to the general public and compatible to the character of adjacent areas. Additionally, only the following uses are permitted conditional uses:
  - A. Fast food.
  - B. Service stations.
  - C. Home improvement stores.
  - D. Communications facilities, including antenna masts and satellite dish antennas located in the rear yard and roof-mounted satellite dish antennas and roof-mounted solar collectors on the roof of the principal structure, provided a registered engineer shall certify that the structure is adequate to support the facility and screening approved by the Town Plan Commission and Waukesha County Park and Planning Department staff.

- E. Entertainment facilities.
- F. Hospitals and health care facilities.
- G. All uses operated greater than 16 hours per day.
- H. Limited outside storage or display.

#### **15.15 Prohibited Uses.**

- 1. Any new residential dwelling.
- 2. Car, truck and trailer sales lots - new and used.
- 3. Outside bulk sales, bulk storage or bulk display of materials or products.
- 4. Drive-in theaters.

#### **15.16 Height Regulations.**

- 1. No principal structure shall exceed thirty-five (35) feet in height.
- 2. No accessory structure shall exceed fifteen (15) feet in height.

#### **15.17 Lot Area, Frontage, and Yard Regulations.**

- 1. Lot Size - Unsewered:
  - (a) Total site may not be less than ten (10) acres with outlots being created by a PUD.
  - (b) When an unsewered lot is created, the Town Plan Commission and Waukesha County Park and Planning Department staff may require the principal structure on the lot to be arranged and dimensioned so as to allow further division of the parcel at such time as sewer become available.
- 2. Lot Size - Sewered:
  - (a) Free-standing building sites shall have a minimum lot size of 20,000 square feet.
- 3. Lot Width (outlots): Free-standing building sites shall have a minimum average width of 120 feet (sewered) and 240 feet (unsewered).
- 4. Front Yard Setback: All buildings shall be located no less than fifty (50) feet from any street or highway right-of-way.
- 5. Side Yard Setback: Shall have a minimum offset of ten (10) feet; however, the Town Plan Commission and Waukesha County Park and Planning Department staff may require a greater offset to accommodate future expansion of the building or future paved driveway access to the rear of the building.
- 6. Rear yard Setback: Shall have a minimum offset of twenty-five (25) feet.

7. Floor Area: Initial construction proposed on each lot shall be a minimum of 5,000 square feet.
8. Floor Area Ratio:
  - (a) Maximum of thirty percent (30%), unsewered.
  - (b) Maximum of fifty percent (50%), sewer.
  - (c) Not more than sixty-five percent (65%), unsewered or seventy percent (70%), sewer of any lot shall be covered with buildings, surfaced pavement, parking, loading areas, or other covering materials which are impervious to surface absorption.

## SECTION 15.2 BP - MIXED USE BUSINESS PARK DISTRICT

### 15.21 Statement of Intent.

- A. This district is to be used as an implementation tool for the municipalities adopted Master Plan where it designates specific types of limited office, professional services, retail, business uses, and light industrial uses free of outside storage or display, serving the adjacent industrial and business uses in larger communities. These uses may occur on individual sites or as part of a planned larger development. This district can only be located within one mile of a freeway interchange or at an intersection of two state trunk highways and be used only where specific types of uses are designated on a locally adopted Master Plan.
- B. The Town Plan Commission and Waukesha County Park and Planning Department staff must review and approve building, site, and operational plans for each building or use proposal to determine if the proposed development complies with the locally adopted plan. The review shall be required to achieve a satisfactory relationship between the permitted use, its operating characteristics, the arterial highway system and adjacent uses such as retail, residential, customer service, business park and light industrial. In the case of a dispute with the decision of the staff or the Town Plan Commission, the matter may be appealed to the Waukesha County Park and Planning Commission.

### 15.22 Permitted Principal Uses.

- A. Permitted Principal Uses: The following principal uses are permitted provided the building, site and operational plans have been submitted to and approved by the Town Plan Commission and Waukesha County Park and Planning Department staff. Development prior to sewers being installed in the area is contingent upon each uses' ability to obtain the necessary sanitary septic system approvals from the proper authorities.
  1. Community and customer service establishments including eating and drinking establishments, overnight lodging, and indoor commercial

recreational facilities such as bowling alleys, physical fitness salons and theaters. Such establishments may not be located adjacent to or opposite a residential district (as designated in the Master Plan) and must be within 1,000 feet of a state trunk highway except as identified by Section 15.23 of this Ordinance.

2. Offices for the professions, businesses and utilities, studios, health care facilities and clinics (Not providing for overnight stay).
3. Automobile Drive-Thru facilities such as financial services, fast food establishments, provided the service rendered or product sold is provided to each customer while they remain in or near their cars and provided to one or a few vehicles at a time (as contrasted with an outdoor theater where all cars are service at once). Such facilities must be located within 1,000 feet of a state trunk highway.
4. Laboratory, research and servicing operations. Servicing operations shall not be for general retail or public consumption but limited to the servicing of the specific product manufactured or assembled at that site.
5. Trades or light industrial operations of limited intensity, including manufacturing assembly, fabrication, and processing operations, warehousing (on parcels greater than 3 acres), wholesaling, and distribution operations, except as otherwise prohibited.

B. Permitted Accessory Uses: The following accessory uses are permitted provided the building or structure, site and operational plans have been submitted to and approved by the Town Plan Commission and Waukesha County Park and Planning Department staff:

1. Garages attached to the principal structure for storage of vehicles used in conjunction with operation of the business.
2. Off-street parking and loading areas, provided detailed site plans, including landscaping and buffering, are submitted to and approved by the Town Plan Commission and Waukesha County Park and Planning Department staff. Front, rear and side yard paved setbacks shall be not less than ten (10) feet. Shared drives and shared parking areas among adjacent properties where appropriate and practical are desirable through the use of cross-easements or other internal linkages between the properties.
3. Communications facilities, including antenna masts and satellite dish antennas located in the rear yard and roof-mounted satellite dish antennas and roof-mounted solar collectors on the roof of the principal structure, provided a registered engineer shall certify that the structure is adequate to support the load. All such facilities shall be screened from view with the facility and

screening approved by the Town Plan Commission and Waukesha County Park and Planning Department staff. Screening shall be required for any satellite dish exceeding 24 inches in size and where more than one (1) exists per property.

4. Bus or taxi shelters or waiting areas.

### **15.23 Permitted Conditional Uses.**

Only the following conditional uses may be permitted provided the building site and operational plans have been submitted to and approved by the Town Plan Commission and Waukesha County Park and Planning Department staff:

1. Child care facilities not accessory to a principal office use.
2. Cooling towers, silos or other similar uses accessory to the permitted principal uses.
3. Automobile service and fuel stations.
4. Restaurants to be located within 1,000 feet of any residential area designated on the Master Plan.
5. Fuel or vehicle repair stations serving trucks other than company motor vehicles. Such facilities shall not be located within 1,000 feet of a residential area designated on the Master Plan unless having direct access to a state trunk highway.
6. Any outdoor recreation involving night operation with limitations on hours of operation.
7. Retail stores and shops located beyond 1,000 feet of a state trunk highway.
8. Retail uses operated more than 16 hours per day.
9. Health care facilities providing for overnight stays.
10. Commercial vehicle terminals with roadway access to a state trunk highway.

### **15.24 Prohibited Uses.**

1. Offensive Uses. No uses shall be permitted or maintained which, when conducted under adequate conditions and safeguards in compliance with the provisions of this Chapter and any additional conditions or requirements prescribed by the Town Plan Commission and Waukesha County Park and Planning Department staff, area or may

become hazardous, noxious or offensive due to emission or odor, dust, smoke, cinders, gas, fumes, noise, vibrations, beat frequency, refuse matter, water-carried waste or fugitive lighting.

2. Specific Prohibited Uses: The following uses are specifically prohibited:

- a. Truck or trailer sales
- b. New and used car lots.
- c. Car wash facilities.
- d. Bulk sales, storage or display of lumber.
- e. Outdoor displays or storage of materials.
- f. Drive-in theaters.
- g. Mobile home sales, service or campgrounds.
- h. Recreational vehicle, all terrain vehicle or outdoor recreational vehicle sales and service.
- i. Junkyard or wrecking yards.
- j. Refining of petroleum or its products.
- k. Petroleum storage yards, not including petroleum storage accessory to a permitted conditional use.
- l. Animal reduction facilities.
- m. Forges.
- n. Foundries.
- o. Garbage or medical incinerators.
- p. Rubbish storage or transfer station.
- q. Slaughterhouses.
- r. Stockyards.
- s. Tanneries.
- t. Bulk storage of salt, fertilizer, or similar materials; explosives, gasoline or other petroleum products in excess of 50,000 gallons, and grease.
- u. Storage of radioactive materials.
- v. Manufacturing or processing of ammonia, asbestos, asphalt, cement, chlorine, cold tar, creosote, explosives, fertilizer, glue, gypsum, insecticides, poison, pulp, proxylin, radium and radioactive materials.
- w. Outside product or equipment testing.
- x. Mini-warehouses or multi-tenant storage.

3. Dwellings: No new dwellings and residences of any kind.

**15.25 Height Regulations.**

- 1. No principal structure shall exceed thirty-five (35) feet in height.
- 2. No accessory structure shall exceed fifteen (15) feet in height.

**15.26 Lot Area, Frontage, and Yard Regulations.**

1. Lot Size - Unsewered:
  - (a) Building site shall have a minimum lot size of 40,000 square feet.
  - (b) When an unsewered lots created, the Town Plan Commission and Waukesha County Park and Planning Department staff may require the principal structure on the lot to be arranged and dimensioned so as to allow further division of the parcel at such time as sewer becomes available.
2. Lot Size - Sewered:
  - (a) Building sites shall have a minimum lot size of 20,000 square feet.
3. Lot Width: Building sites shall have a minimum average width of 120 feet (sewered) and 240 feet (unsewered).
4. Front Yard Setback: All buildings shall be located not less than fifty (50) feet from any street or highway right-of-way. Signs not less than twenty (20) feet from any street or highway right-of-way.
5. Side Yard Setback: Shall have a minimum offset of ten (10) feet; however, the Town Plan Commission and Waukesha County Park and Planning Department staff may require a greater offset to accommodate future expansion of the building or future paved driveway access to the rear of the building.
6. Rear Yard Setback: Shall ave a minimum offset of twenty-five (25) feet.
7. Floor Area: Initial construction proposed on each lot shall be a minimum of 5,000 square feet.
8. Floor Area Ratio: Maximum of thirty percent (30%). In addition, no more than sixty-five percent (65%) of any lot shall be covered with buildings, surface pavement, parking, loading areas, or other covering materials which are impervious to surface absorption prior to the installation of sanitary sewers. Upon installation of sanitary sewers, the total impervious coverage shall not exceed 75% and the floor area ratio shall not exceed 50%.

## **15.27 Signs.**

1. Landscape and site plans for signs must be submitted to, reviewed and approved by the Town Plan Commission and the Waukesha County Park and Planning Department staff.
2. Sign Regulations:
  - (a) Wall sign: Placed on or against the exterior wall of the building or one projecting sign attached to the building front may be permitted and shall be subject to the following:

- (1) Single-use structure signs shall not exceed .5 square feet for each one (1) foot width of the building.
- (2) Multi-use structure signs shall not exceed .25 square feet for each one (1) foot in width per front foot per individual use.
- (b) Free Standing Signs: One free standing sign may be permitted per property and may be in conjunction with a wall sign and may not exceed 30 square feet in area on each sign face. Free standing signs may not be closer than the 150 feet from another free standing sign.
- (c) Signs used for identification of individual tenants in multi-tenant buildings must be uniform with regard to panel design, letter style and color. Said sign may contain painted metal surfaces with or without illumination or individual letters routed out of metal, plastic or wood surfaces.
- (d) Signs may be non-illuminated or internally illuminated.
- (e) The materials of the sign shall be compatible to the adjacent building materials.

## SECTION 16. Q-1 QUARRYING DISTRICT

### 16.01. Use regulations.

#### (1) Permitted uses:

- (A) Any use as permitted in the A-1 agricultural district.
- \_\_\_\_\_(B): Quarrying although permitted by right, shall be authorized as a conditional use under Section 3.08 of this Ordinance. By placing a property in this category, it has been determined that the subject area is appropriate for such quarrying designation and the issuance of a conditional use permit to authorize the quarrying of the site shall be conditional on compliance with the standards and regulations as set forth in Section 3.07(7)(T).
- (C) The following related operations where accessory to the permitted quarrying operation, subject to the regulations of section 3.07(7)(T):
  - 1. The manufacture of concrete building blocks or other similar blocks.
  - 2. Production of ready-mixed concrete.

### 16.02. Building location.



(1) Setbacks:

(A) Quarrying operations: As required by section 3.07(7)(T).

(B) Other permitted uses: Fifty (50) feet minimum.

(2) Offsets:

(A) Quarrying operations: As required by section 3.07(7)(T).

(B) Other permitted uses: Twenty (20) feet minimum.

**16.03. Height regulations.**

(1) Principal building: Thirty-five (35) feet maximum.

(2) Accessory buildings:

(A) Quarrying operations: Sixty (60) feet maximum.

(B) Other permitted uses: Fifteen (15) feet maximum.

**16.04. Area regulations.**

(1) Floor area:

(A) Minimum required for residence purposes:

1. First floor: Nine hundred (900) square feet.

2. Total, one (1) family: One thousand (1,000) square feet.

3. Total, two (2) families: One thousand eight hundred (1,800) square feet.

(B) Maximum F.A.R. permitted: Ten percent.

(2) Lot size:

(A) Minimum area: Three (3) acres.

(B) Minimum average width: Two hundred (200) feet.

(3) Open space: One (1) acre minimum per family.

**SECTION 16a. M-1 LIMITED INDUSTRIAL DISTRICT**

**16.01a. Use regulations.**

(1) Permitted uses:

(A) Any use as permitted in a B-3 general business or A-1 agricultural district, except that residential use shall be permitted only in conjunction with or accessory to an otherwise permitted use.

(B) Trades or industries of a restrictive character which are not detrimental to the district or to the adjoining residential areas by reason of appearance, noise, dust, smoke or

odor, provided the location, building and site plan, and plan of operation have been submitted to and approved by the plan commission, but not including any use enumerated under section 17a(C) or any of the following:

1. Junkyards.
2. Drop forges, foundries, refineries, tanneries or any similar use, the normal operation of which causes objectionable noise, odor, dust or smoke.

**16.02a. Building location.**

- (1) Setback: Fifty (50) feet minimum.
- (2) Offset: Ten (10) feet minimum.

Exception: where a lot abuts on a district boundary line of a more restrictive district permitting residence use, the following regulations shall apply:

- (A) Buildings or uses permitted in the more restrictive district shall comply with the offset requirements of the more restrictive district.
- (B) Buildings or uses not permitted in the more restrictive district shall provide a fifty (50) feet minimum offset and shall be screened from the more restrictive district by a planting screen at least six (6) feet high and fifteen (15) feet in width.

**16.03a. Height regulations.**

- (1) Principal building: Sixty (60) feet maximum.
- (2) Accessory building: Sixty (60) feet maximum.

**16.04a. Area regulations.**

- (1) Floor area:
  - (A) Minimum required for residence purposes: Nine hundred (900) square feet per family.
  - (B) Maximum F.A.R. permitted: Seventy (70) percent.
- (2) Lot size:
  - (A) Minimum area: One (1) acre.
  - (B) Minimum average width: One hundred fifty (150) feet.
- (3) Open space: No requirement.

**SECTION 17a. M-2 GENERAL INDUSTRIAL DISTRICT**

**17.01a. Use regulations.**

(1) Permitted uses:

- (A) Any use as permitted in the M-1 limited industrial district
- (B) Quarrying, subject to the regulations of section 3.07(7)(T).
- (C) Any other commercial or industrial use not otherwise prohibited by law, provided their location, building and site plan, and plan of operation have been submitted to and approved by the plan commission, except the following:
  - 1. Cement, lime, gypsum or plaster of paris manufacture.
  - 2. Acid manufacture.
  - 3. Manufacture of explosives, but not including the making of small arms ammunition.
  - 4. Storage of explosives, except as incidental to a permitted use.
  - 5. Fertilizer manufacture.
  - 6. Offal or dead animal reduction.
  - 7. Glue manufacture, fat rendering or distillation of bones.
  - 8. Stockyards or commercial slaughter of animals.

**17.02a. Building location.**

( 1) Setback: Fifty (50) feet minimum except that where the opposite frontage is in a residential or agricultural district, a one hundred (100) feet minimum setback shall be required.

(2) Offset: Ten (10) feet minimum, except that where a lot abuts on a district boundary line of a more restrictive district permitting residence use. the following regulations shall apply:

- (A) Buildings or uses permitted in the more restrictive district shall comply with offset requirements of the more restrictive district.
- (B) Buildings or uses not permitted in the more restrictive district shall provide a one hundred (100) feet minimum offset from a restricted or local business district and a two hundred (200) feet minimum offset from a residential or agricultural district and shall be screened from the more restrictive district by a planting screen at least six (6) feet high and fifteen (15) feet in width.

**17.03a. Height regulations.**

- (1) Principal building: Sixty (60) feet maximum.
- (2) Accessory buildings: Sixty (60) feet maximum.

**17.04a. Area regulations.**

(1) Floor area:

- (A) Minimum required for residence purposes: Nine hundred (900) square feet per family.
- (B) Maximum F.A.R. permitted: Seventy (70) Percent.

(2) Lot size:

- (A) Minimum area: One (1) acre.
- (B) Minimum average width: One hundred fifty (150) feet.

(3) Open space: No requirement.

**SECTION 17. BOARD OF ADJUSTMENT<sup>1</sup>**

**17.01. Establishment.**

\_\_\_\_\_(1) Authority: There is hereby created a Board of Adjustment pursuant to Section 59.99 of the Wisconsin State Statutes, to consist of five (5) members and two (2) alternates to be appointed by the County Executive and confirmed by the County Board. The first appointments shall be for a term of one (1), two (2), and three (3) years respectively, and thereafter on July 1 of each year the new appointment shall be for three (3) year terms.

(2) General: all members of the board shall reside within the county and outside the limits of incorporated areas, provided however, that no two (2) members shall reside in the same town. A vacancy shall be filled for the unexpired term of any member whose term becomes vacant, by appointment of the chairman of the county board. The actual and necessary expenses incurred by the board in performance of its duties shall be paid and allowed as cases of other claims against the county. The members of the board shall also receive per diem compensation as provided for by the county board. The board shall appoint a chairman, a vice-chairman and shall adopt such bylaws as the board deems necessary.

**17.02. Rules.**

(1) *General*: The board shall elect its own chairman to hold office for one (1) year and until his successor is elected. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent, of failing to vote indicating such fact, and shall keep records of its examinations, and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

(2) *Meetings*: Meetings of the county board shall be held at the call of the chairman and at such other times as the board may determine. and shall be open to the public.

(3) *Procedural*: The board shall adopt other rules governing its procedure as are necessary, consistent with this ordinance.

(4) *Cooperation with zoning agency*: The board shall keep the county zoning agency informed as to any matters brought before it and shall call upon the zoning agency for such information as is pertinent to the matters under consideration.

(5) The state department of natural resources shall be notified of any decision of the board within ten (10) days from the date of the decision. (Ord. No. 141-44, § LVII, 7-22-86)

### **17.03. Powers.**

(1) *Defined*: The board of adjustment shall have the following powers as defined by statute:

- (A) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of section 59.97 Wisconsin Statutes, or of this ordinance.
- (B) To hear and decide special exceptions to the terms of this ordinance upon which such board is required to pass under this ordinance.
- (C) To authorize upon appeal in specific cases such variances from the terms of this ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of this ordinance shall be observed, public safety and welfare secured, and substantial justice done.
- (D) To grant special exceptions and variances for renewable energy resource systems if said system cannot meet normal locational requirements of this ordinance for accessory structures. If the board denies an application for a special exception or variance for a renewable energy resource system, the board shall provide a written statement of its reasons for denying the application. In this paragraph, "renewable energy resource systems" means a solar energy system, a waste conversion energy system, a wind energy system or any other energy system which relies on a renewable energy resource. (Ord. No. 141-44, § LVIII, 7-22-86)

(2) *Additional requirements*: In making its determination, the Board shall consider whether the proposed exception, variance or use would be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects; and may impose such requirements and conditions with respect to location, construction, maintenance

and operation-in addition to any which may be stipulated in this ordinance-as the board may deem necessary for the protection of adjacent properties and the public interest and welfare.

(3) *Performance standards*: In order to reach a fair and objective decision, the Board may utilize and give recognition to appropriate performance standards which are available in model codes or ordinances, or which have been developed by planning, manufacturing, health, architectural and engineering research organizations.

(4) *Enforcement of decision*: In exercising the above-mentioned powers, such board may in conformity with the provisions of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken; and may issue or direct the issue of a permit provided that no such action shall have the effect of permitting in any district a use prohibited in that district; of rezoning; of allowing a use or variance which would have the effect of intensifying a use in a manner contrary to what a similarly situated property would be allowed; of permitting, without the approval of the county zoning agency, any building with the base setback area as established by section 3.08(1) of this ordinance, or of granting exceptions to chapters H63, NR115 or NR116 of the Wisconsin Administrative Code, the Waukesha County Sanitary Ordinance and any other state or local ordinance and any other federal, state, or local ordinance. (**Editor's note--** Chapter H63 is now known as DILHR83.) **Cross reference**: Community health code. App. E.

(5) *Required vote*: The concurring vote of a majority of the members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to effect any variation therefrom. The grounds of every such determination shall be stated.

(6) *Further appeal*: Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board or bureau of the municipality, may appeal from a decision of the board of adjustment within thirty (30) days after the filing of the decision in the office of the board of adjustment in the manner provided in section 59.99(10) (11) (12) (13) (14) of the Wisconsin Statutes. (Ord. No. 141-44, §§ LVIII, LIX, 7-22-86)

#### **17.04. Appeals.**

(1) *How filed*: Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any such decision of the zoning administrator or other administrative officer. Such appeal shall be taken within twenty (20) days from the date of the decision of the zoning administrator or other administrative officer appealed from by filing with the officer from whom the appeal is taken, and with the board of adjustment, a notice of appeal specifying the grounds thereof and together with the proper fee as established under section 20.01(4) of this ordinance. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action

appealed from was taken.

(2) *Stay*: An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whose decision the appeal is taken certifies to the board of adjustment After the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(3) *Hearing*: Each appeal shall be heard within a reasonable time and not to exceed ninety (90) days-from the time the appeal was filed with the board. Notice of hearing shall be given by publishing in a newspaper of general circulation in the vicinity of the appeal at least once each week for two (2) consecutive weeks and not less than seven (7) days from the date of hearing. Written notice shall be given to the state department of natural resources not less than ten (10) days prior to the hearing. Written notice shall also be given to the administrative officer appealed from and by certified mail to the petitioner, the clerk of the town wherein the affected lands are located, the owners of each parcel of land within one hundred (100) feet of the land in question, and any other specifically interested parties. At the hearing, any party may appear in person, or by agent or by attorney.

(4) *Decision*: The decision on any appeal variance, special exception or interpretation shall be made within fifteen (15) days after completion of the hearing thereon unless such time is extended with the mutual consent of the board and the petitioner. At such time as a decision is made, the petitioner and the department of natural resources shall be notified in writing within ten (10) days of the date of the decision. (Ord. No. 141-44, § LXI, 7-22-86)

#### **17.05. Special exceptions.**

Requests for special exceptions upon which the board of adjustment is required to pass by the terms of this ordinance shall be presented by petition and a public hearing held thereon as provided for appeals.

### **SECTION 18. CHANGES AND AMENDMENTS**

#### **18.01. Authority.**

Pursuant to the provisions of section 59.97(5) of the Wisconsin Statutes, the county board may amend the regulations of this ordinance or change the district boundaries.

#### **18.02. Procedure.**

(1) *Petition*: A petition for amendment of this ordinance may be made by any property owner in the area to be affected by the amendment, by the town board of any town wherein the

ordinance is in effect, by any member of the county board or by the county zoning agency. In the case of a comprehensive map amendment to a large area of lands affected by this ordinance (more than 6 properties) and which does not set forth a specific amendment to a particular property owner's land and where such petition is initiated by the county zoning agency or the town board, the requirements for individual notice, as set forth in [section] 19.02(1)(B) to individual property owners, shall not be required. All the requirements of posting and publication and hearing notice shall be provided in accordance with this ordinance. With respect to any change in the text of this ordinance, no specific notice to property owners is required. All other notice requirements shall be followed.

(2) *Filing of petition:* One (1) original and five (5) copies of the amendment shall be submitted directly to the zoning administrator in order that notice of public hearings and other processing may be initiated without unnecessary delay (Waukesha County Board Resolution 9/54). One (1) copy of the petition and the notice of public hearing shall be forwarded to the SE District Office of the Wisconsin Department of Natural Resources not less than ten (10) days prior to the hearing. When the amendment involves a change in zoning of a floodland area, said notice and petition shall also be sent to the Federal Emergency Management Agency. When the petition involves a change in shoreland wetlands, the additional requirements set forth in section 18.05 shall be followed.

(3) *Fee:* A petition submitted by other than a governmental body or agency shall be accompanied by the proper fee as established under section 20.01(4) of this ordinance, payable to the Waukesha County Park and Planning Commission to help defray administrative costs of such petition.

(4) *Data required:* In addition to all information required on the petition form, the petitioner shall supply the following:

- (A) Six (6) copies of a map accurately drawn to scale of not less than one hundred (100) feet to the inch showing the land in question, its location, the length and direction of each boundary thereof, the location and existing use of all buildings on such land, and the principal use of all properties within three hundred (300) feet of such land.
- (B) The names and complete mailing addresses, including zip codes, of the owners of all properties within three hundred (300) feet of any part of the land included in the proposed change.
- (C) Any further information which may be required by the zoning administrator to facilitate the making of a comprehensive report to the county board including a detailed description of the intended new use.

(5) *Hearing:* As soon as practical after receipt of each petition, the zoning agency shall call a public hearing thereon. Notice of the time and place of such hearing shall be given in the manner prescribed under section 19 of this ordinance.



(6) *Zoning agency action and report:* As soon as possible after such public hearing, the county zoning agency shall act on such petition either approving, modifying and approving, or disapproving of the same. If its action is favorable to granting the requested change, or any modification thereof, it shall cause an ordinance to be drafted effectuating its determination and shall submit such proposed ordinance directly to the county board with its recommendations. If the county zoning agency, after its public hearing, shall recommend denial of the petition, it shall report its recommendation directly to the county board with its reasons for such action. Proof of publication of the notice of the public hearing held by the county zoning agency and proof of the giving of notice to the town clerk of such hearing shall be attached to either such report.

(7) *County board action:* Upon receipt of the report of the county zoning agency, the county board may adopt the ordinance as drafted by such zoning agency or with amendments, or it may refuse to deny the petition for amendment as recommended by the county zoning agency, in which case it shall refer the petition back to the county zoning agency, with direction to draft an ordinance to effectuate the petition, and report the same back to the county board which may then adopt or reject such ordinance, or it may refer the petition back to the county zoning agency for reconsideration including possible further public hearing.

(8) *Protest:* In case a protest against a proposed amendment is filed with the county clerk at least twenty-four (24) hours prior to the date of the meeting of the county board at which the report of the county zoning agency is to be considered, duly signed and acknowledged by the owners of fifty (50) percent or more of the area proposed to be altered, or by the owners of at least fifty (50) percent of the frontage immediately in the rear or along the side boundaries thereof within three hundred (300) feet of the area proposed to be changed, or by the owners of at least fifty (50) percent of the frontage directly opposite and across a public street, highway or alley, from the area proposed to be altered, action on such ordinance may be deferred until the county zoning agency shall have had a reasonable opportunity to ascertain and report to the county board as to the authenticity of such ownership statements. Each signer of such protest shall state the amount of area or frontage owned by him, and shall include a description of the lands owned by him. If such statements are found to be true, such ordinance shall not be adopted except by the affirmative vote of three-fourths of the members of the county board present and voting. If such statements are found to be untrue to the extent that the required frontage or area ownership is not present, such protest may be disregarded.

(9) *Effectuation:* Any such amendatory ordinance when so adopted by the county board, shall become effective after passage by the county board and publication pursuant to [section] 59.09 Wisconsin Statutes except as may be modified in section 18.05 herein. In the case of floodplain amendments and adjustments, the amendment shall not become effective until the Wisconsin Department of Natural Resources approves the amendment after certification that the area has been removed from the floodplain and until a letter of map amendment is issued by the Federal Insurance Administration of the Federal Emergency Management Administration. Upon receipt of the above cited approvals, the county clerk shall record in the clerk's office the date on which such ordinance is passed by the county board and approved by the other agencies required to approve and shall notify the town clerk of all towns affected by such ordinance of such date that the ordinance will take effect and also make such report to the county zoning administrator and the county board which report shall be printed in the proceedings of the county board.

(Ord. No. 141-44, §§ LXII-LXIV, 7-22-86)

### **18.03. Zoning of county owned lands.**

(1) The county board may by ordinance zone and rezone any lands owned by the county without necessity of securing the approval of the town boards of the towns wherein such lands are situated and without following the procedure outlined in section 59.97(5) Wisconsin Statutes, provided that the county board shall give written notice to the town board of the town wherein such lands are situated of its intent to so rezone and shall hold a public hearing on the proposed rezoning ordinance and give notice of such hearing by posting in five (5) public places in the town.

(2) This subsection does not apply to land subject to a town zoning ordinance which is purchased by the county for use as a solid or hazardous waste disposal facility or hazardous waste storage or treatment facility, as these terms are defined under section 144.43 Wisconsin Statutes.

### **18.04. Zoning in annexed areas.**

(1) *Removal from map:* When any lands previously under the jurisdiction of a county zoning ordinance shall have been finally removed from such jurisdiction by reason of annexation to an incorporated municipality, and after the regulations imposed by the county zoning ordinance have ceased to be effective as provided in section 59.97(7) Wisconsin Statutes, the county board may, on the recommendation of its zoning agency, adopt such amendatory ordinances as shall remove or delete such annexed lands from the official zoning map or written descriptions without following any of the procedures provided in section 59.97(5) (e) 1-6 of the Wisconsin Statutes, and such amendatory ordinances shall become effective upon passage and publication. A copy of such ordinance shall be forwarded by the county clerk to the clerk of each town in which the lands affected were previously located. Nothing in this paragraph shall be construed to nullify or supersede the provisions of section 80.64 Wisconsin Statutes.

(2) *Continued effect of ordinance:* Whenever any area which has been subject to a county zoning ordinance petitions to become part of a village or city, the regulations imposed by such county zoning ordinance shall continue in effect, without change, and shall be enforced by such village or city until such regulations have been changed by official action of the governing body of such village or city, except that in the event an ordinance of annexation is contested in the courts, the county zoning shall prevail and the county shall have jurisdiction-over the zoning in the area affected until ultimate determination of the court action. (Ord. No. 141-44. § LXVI. 7-22-86.)

### **18.05. Shoreland/wetland rezoning procedure.**

(1) For all proposed text and map amendments to the shoreland/wetland provisions of this ordinance, the appropriate district office of the department shall be provided with the following:

- (A) A copy of every petition for a text or map amendment to the shoreland/wetland provisions of this ordinance, within five (5) days of the filing of such petition with the zoning administrator. Such petition shall include a copy of the Final Wisconsin Wetland Inventory Map adopted as part of this ordinance describing any proposed rezoning of a shoreland/wetland.
- (B) Written notice of the public hearing to be held on a proposed amendment at least ten (10) days prior to such hearing.
- (C) A copy of the county zoning agency's findings and recommendations on each proposed amendment within ten (10) days after the submission of those findings and recommendations to the county board; and
- (D) Written notice of the county board's decision on the proposed amendment within ten (10) days after it is issued.

(2) A wetland, or a portion thereof, in the shoreland/wetland district shall not be rezoned if the proposed rezoning may result in a significant adverse impact upon any of the following:

- (A) Storm and flood water storage capacity;
- (B) Maintenance of dry season stream flow, the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, or the flow of groundwater through a wetland;
- (C) Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
- (D) Shoreline protection against soil erosion;
- (E) Fish spawning, breeding, nursery or feeding grounds;
- (F) Wildlife habitat; or
- (G) Areas of special recreational, scenic or scientific interest, including scarce wetland types.

(3) If the department of natural resources notifies the county zoning agency that a proposed text or map amendment to the shoreland/wetlands governed by this ordinance may have a significant adverse impact upon any of the criteria listed in subsection (2) above, that amendment, if approved by the County Board, shall contain the following provision:

"This amendment shall not take effect until more than thirty (30) days have elapsed after written notice of the county board's approval of this amendment is mailed to the department of natural resources. During that thirty-day period the department of natural resources may notify the county board that it will adopt a superseding shoreland ordinance for the county

under section 59.971(6), Wisconsin Statutes. If the department does so notify the county board, the effect of this amendment shall be stayed until the section 59.971(6) adoption procedure is completed or otherwise terminated."  
(Ord. No. 141-44, § LXVII, 7-22-86)

## SECTION 19. PUBLIC HEARINGS

### 19.01. Notice.

In order that the owners of property involved and other legitimately interested parties may have fair opportunity to be heard, adequate notice shall be given of any public hearing required by the provision of this ordinance stating the time and place of such hearing and the purpose for which the hearing is being held. (**Cross references**--Notice of amendments, § 18.02; notice of conditional use application, § 3.07(3), notice of appeals, § 17.04(3).

### 19.02. Procedure.

#### (1) Posting and publishing:

- (A) Except as may be otherwise herein specifically provided, notice of public hearing shall be given by publication once a week for two (2) consecutive weeks in the official newspaper of the county, or in the newspaper of general circulation in the area of the proposed change or conditional use.
- (B) When the hearing involves a proposed change in the zoning district classification of any property, or the granting of a conditional use, notice of the public hearing shall be given by certified mail to the owners of all lands within three hundred (300) feet of any part of the land included in such proposed change or conditional use at least seven (7) days before such public hearing.  
The failure of such notice to reach any property owner, provided such failure be not intentional, shall not invalidate any amending ordinance or granting of conditional use.
- (C) When the hearing involves an amendment to the zoning ordinance, a copy of such notice shall be sent without delay by certified mail to the town clerk of each town which would be affected by the amendment, and in no case less than seven (7) days prior to the date of such hearing. The town clerk shall in turn notify the plan commission without delay.
- (D) A notice of public hearing shall be sent to the county board supervisor representing the subject area, the main office and the appropriate district office of the state department of natural resources, the federal insurance administration and, where appropriate, the U. S. Army Corps of Engineers.

\_\_\_\_\_(2): Joint hearing: When the hearing involves a proposed change in the zoning district classification of any property, the hearing shall be held jointly by the County Zoning Agency, or its

designee, and the plan commission of any town or towns affected by such change. Within thirty (30) days after the hearing, the plan commission shall transmit its recommendation on the proposed change to the county zoning administrator. Approval by the town board in such zoning amendments is not required and disapproval by such town board is advisory only.

## **SECTION 20. GENERAL ADMINISTRATION**

### **20.01. Zoning agency.**

(1) *Park and planning commission designated:* The Waukesha County Park and Planning Commission is hereby designated as the county zoning agency pursuant to section 59.97(2)(a) Wisconsin Statutes.

(2) *Responsibilities:* The zoning agency shall oversee the administration of this ordinance, hold the necessary public hearings, and make recommendations to the county board relative to all zoning matters.

(3) *Approvals required:* Where, in the interest of preserving the maximum degree of local administration, the determination of the town plan commission or town board is required by the provisions of this ordinance for conditional uses and other special approvals, such determination shall be subject in all cases to final approval by the county zoning agency before it shall be effective. It shall be the responsibility of the local determining body to notify the county zoning agency of any petitions or requests in such cases, and of any hearings to be held, and to transmit the final determination to the county zoning agency within ten (10) days in order that they may act promptly upon its ratification.

(4) *Fee schedule:* The fees referred to in other sections of this ordinance shall be established by the Waukesha County Park and Planning Commission in a fee schedule and may from time to time be modified by commission resolution. The processing fees are related to costs involved in handling zoning permit applications, conditional use petitions, appeals to the board of adjustment and zoning amendments and changes.

### **20.02. Zoning administrator.**

(1) *Designation:* The zoning agency shall designate a member of its staff as "zoning administrator" for the administration and enforcement of the provisions of this ordinance under its direction.

(2) *Duties:* In the administration and enforcement of this ordinance the zoning administrator shall perform the following duties:

- (A) Issue the necessary zoning and occupancy and use permits provided in the provisions of the ordinance and of any applicable building code have been complied with and

make or cause to be made the necessary inspections.

- (B) Keep an accurate record of all zoning and occupancy and use permits issued.
- (C) Keep accurate records and maps of the zoning ordinance and any amendments or changes thereto.

(3) *Authority:* In the enforcement of this ordinance, the zoning administrator shall have the power and authority for the following:

- (A) At any reasonable time, and for any proper purpose, to enter upon any public or private premises and make inspection thereof.
- (B) Upon reasonable cause or question as to proper compliance, to revoke any zoning or occupancy and use permit and issue cease and desist orders requiring the cessation of any building, moving, alteration or use which is in violation of the provisions of this ordinance, such revocation to be in effect until reinstated by the zoning administrator or the zoning board of adjustment.
- (C) In the name of the county and with authorization of the zoning agency commence any legal proceedings necessary to enforce the provisions of this ordinance including the collection of forfeitures provided for herein.

(4) *Deputies:* To expedite local administration of this ordinance, the zoning agency may designate in each town a deputy to the county zoning administrator for the purpose of field inspection and verification of the conditions shown on the application for zoning and the occupancy and use permits. The deputy shall be authorized to accept application for zoning and occupancy and use permits and shall promptly make any necessary inspection to verify the correctness of the application and transmit the application to the county zoning agency. The deputy shall also make the necessary inspection as provided in section 3.03(3)(B) of this ordinance before an occupancy and use permit shall be issued.

### **20.03. Violations.**

(1) *Penalties:* Any person, firm, company, or corporation who violates, disobeys, omits, neglects, refuses to comply with, or who resists the enforcement of any of the provisions of this ordinance, shall be subject to a fine of not less than ten dollars (\$10.00) and not to exceed the sum of two hundred dollars (\$200.00) for each offense, together with the costs of the action, and in default of the payment thereof, shall be imprisoned in the County Jail of Waukesha County, for a period of not to exceed six (6) months, or until such fine and the subsequent costs have been paid. Each day that a violation is permitted to exist shall constitute a separate violation and be punishable as such. Restoration of environmental damage may also be required in addition to any forfeitures levied.

(2) *Enforcement by injunction:* Compliance with the provisions of this ordinance may also be enforced by injunctive order at the suit of the county or one (1) or more owners of real estate situated within an area affected by regulations of this ordinance. It shall not be necessary to prosecute for fine or imprisonment before resorting to injunctive proceedings.

(3) *Declared nuisances:* Any building erected, structurally altered, or placed on a lot, or any use carried on in violation of the provisions of this ordinance is hereby declared to be a nuisance per se, and the county may apply to any court of competent jurisdiction to restrain or abate such nuisance. (Ord. No. 141-44, § LXVIII, 7-22-86)

## **SECTION 21. VALIDITY**

### **21.01. Abrogation and greater restrictions.**

It is not intended by this ordinance to repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, ordinances, rules, regulations, or permits previously adopted or issued pursuant to law. However, wherever this ordinance imposes greater restrictions, the provisions of this ordinance shall govern. Where a town ordinance is more restrictive than this ordinance in relation to floodlands and shorelands, only its greater restrictions are effective. The shoreland and floodplain protection provisions of this ordinance required by NR115 and NR116 Wisconsin Administrative Code, supersede all less restrictive provisions of any other county zoning ordinance. (Ord. No. 141-44, § LXIX, 7-22-86)

### **21.02. Interpretation.**

In this interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the county and shall not be construed to be a limitation or repeal of any other power now possessed by Waukesha County.

### **21.03. Severability and non-liability.**

If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

The county does not guarantee, warrant, or represent that only those areas designated as floodlands will be subject to periodic inundation and hereby asserts that there is no liability on the part of the county board of supervisors, its agencies, or employees for any flood damages that may occur as a result of reliance upon and conformance with this ordinance.

### **21.04. Repeal.**

All ordinances or parts of ordinances of the county inconsistent or conflicting with this ordinance, to the extent of the inconsistency only, are hereby repealed. All other ordinances: enacted by the county under section 59.97 of the Wisconsin Statutes relating to floodlands and shorelands are hereby superseded.

**21.05. Title.**

This ordinance shall be known as, referred to, and cited as the "Shoreland and Floodland Protection Ordinance, Waukesha County, Wisconsin" and is herein referred to as the "ordinance".

**21.06. Effective date.**

This ordinance shall be effective after a public hearing and recommendation by the county park and planning commission, adoption by the county board, and a duplicate copy submitted by the county clerk by registered mail to each town clerk, in accordance with section 59.97(5) of the Wisconsin Statutes.

Regulations contained herein shall not require approval or be subject to the disapproval of any town in accordance with section 59.971(2)(a) of the Wisconsin Statutes.

**21.07. Adoption.**

Passed and approved by the County Board of Supervisors of Waukesha County, Wisconsin, this 23rd day of June 1970.

Lloyd G. Owens  
Chairman

Richard L. Sylvester  
County Clerk

[Approved by Wisconsin Department of Natural Resources, Division of Environmental Protection; Bureau of Water and Shoreland Management.

Shoreland Regulations June 30, 1970  
Floodland Regulations July 30, 1970  
Amended Approval January 18, 1982

Published in the Official County Newspaper. The Oconomowoc Enterprise, July 16, 1970. ]



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ENDNOTES:

1. **Cross reference** - Boards and commission generally, §2-526 et. seq.

WAUKESHA COUNTY SHORELAND, FLOODLAND PROTECTION ORDINANCE